THE Freeman

IDEAS ON LIBERTY

FEBRUARY 1967

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THE Freeman — A MONTHLY JOURNAL OF IDEAS ON LIBERTY

FEBRUARY 1967 Vol. 17, No. 2

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GARY NORTH

DOMESTIC INFLATION versus INTERNATIONAL SOLVENCY

IN RECENT MONTHS there has been an increasing amount of discussion concerning "international liquidity," "balance of payments," "dollar glut," gold outflow, and monetary stability. Economists, even when they agree on the nature of the problems involved, seldom are unanimous on the solutions. The debates that are going on among economists, bankers, and politicians are frequently phrased in highly technical and abstruse language, but the basic issue is simply this: how can nations continue to inflate their domestic currency and credit systems, and at the same time preserve mutual trust in each other's solvency?

The "ideal" economic world, in the view of many of our leading economists, is one in which we would have "freedom for each country to pursue its own independent economic policy unhampered by balance-of-payments considerations; and stability of [monetary] exchange rates to encourage international relations."[1] Unfortunately, as the author hastens to add, "the two are incompatible...." The goal of today's international finance experts, therefore, is to discover the best compromise possible, the most workable balance between the two alternatives.

In the context of contemporary economic theory and practice, the phrase, "freedom to pursue domestic economic policy," invariably means the freedom of the monetary authorities to inflate a nation's circulating media (currency, coins, and credit). The motivations be-

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[1] Tibor Scitovsky, "Requirements of an International Reserve System," in *Essays in International Finance*, #49, November, 1965 (Princeton University's International Finance Section), p. 3.

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hind domestic inflation are varied; an important one is that the state can raise its level of expenditure without imposing a corresponding increase in the *visible* tax rate. Inflation, in short, is a form of invisible taxation, and those on relatively fixed incomes are the ones who pay the tax; they must decrease their purchases of consumer products and services when the level of prices rises.

Inflation for Full Employment

But the primary economic argument which is used today to defend an expansion of the domestic money supply is that inflation keeps "effective demand" at high levels, that people with the newly created money will buy more goods, and that businesses as a direct result will be stimulated to increase production. Consequently, more people will be employed by these firms.

Fundamental to this argument is the idea that the operation of the free market is insufficient to insure employment for all those who desire to work. Somehow, the market fails to dispose of all goods offered for sale (through the unhampered action of the pricing mechanism), and therefore the demand registered by purchases is unable to encourage greater production. This perspective has been common to most socialist parties, but it became a basic presupposition of modern nonsocialist thought through the teachings of John Maynard Keynes in his *General Theory of Employment, Interest and Money* (1936). Keynes realized that a downward revision of the level of wages would be opposed vigorously by labor unions, and the governments of most western democracies would find such a downward revision politically inexpedient. Money wages must not be permitted to fall. However, if inflation were allowed to raise costs and prices, real wages would fall without the organized opposition of labor.[2] It was clear that if real wages did not fall, the result would be unemployment; the least productive workers would have to be dismissed.

Keynes wrote during the depression, but an analogous situation exists today. The structure of minimum wage laws creates a similar problem: the low production worker would lose his job were it not for the fact that governments are permitting real wages to fall (at least in comparison to what the wages would be in the absence of inflation). Minimum wage laws have, in effect, made inflation a political necessity. Eventually, the misallocation of scarce resources promoted by the inflation will

[2] See the analysis of Keynes's position by Murray N. Rothbard, *Man, Economy and State* (Princeton: Van Nostrand, 1962), II, pp. 683-87.

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harm both the laborers and the manufacturers, as prices soar beyond the means of all but the most influential companies (politically) and the members of the strongest labor unions.

In order to keep businesses going at full production, according to the "new economics," thus keeping labor fully employed, ever-increasing doses of inflation are required. As Wilhelm Roepke has pointed out, it was precisely this philosophy of inflationary full employment which motivated the peacetime economic planning of Nazi Germany, with the resulting system of "repressed inflation" – rationing, shortages, and misallocation of resources.[3]

The nation which indulges itself with an inflationary "boom" inevitably faces the economic consequences: either runaway inflation or a serious recession-depression. If the inflation should cease, unemployment will increase, and the earlier forecasts of the nation's entrepreneurs (which were based on the assumption of continuing inflation) will be destroyed.[4] Since no political party is anxious to face the consequences at the polls of a depression, there is a tendency for inflations, once begun, to become permanent phenomena. Tax increases are postponed as long as possible, "tight" money (i.e., higher interest rates) is unpopular, and cuts in governmental expenditures are not welcomed by those special interest groups which have been profiting by the state's purchases. The inflation continues. As Jacques Rueff has put it: "I know that these [monetary] authorities are not able, they have not the power – the human possibility, at least in our regime – to follow the policy which they ought to."[5]

International Complications

This should serve as an introduction to the domestic problem which faces the various western democracies. From an international standpoint, the situation is reversed. The primary need for international trade is a common means of payment which is not subject to violent upward surges,

[3] Roepke, "The Economics of Full Employment," in Henry Hazlitt (ed.), *The Critics of Keynesian Economics* (Princeton: Van Nostrand, 1960), p. 374. For a full discussion of "repressed inflation," see Roepke, *A Humane Economy* (Chicago: Regnery, 1960), pp. 151-221. My own pamphlet, *Inflation: the Economics of Addiction* (San Carlos, Cal.: The Pamphleteers, 1965), also deals with the issue of chronic inflation.

[4] Cf. Ludwig von Mises, *Human Action* (New Haven, Conn.: Yale University Press, 1949, 1963), chapter 20. Also, see Rothbard, *America's Great Depression* (Princeton: Van Nostrand, 1963).

[5] Jacques Rueff and Fred Hirsch, "The Role and Rule of Gold: A Discussion," in *Essays in International Finance*, #47, June, 1965 (Princeton University's International Finance Section), p. 6.

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a money free from most inflationary tendencies. Foreign governments and central banks want to be able to trust their neighbors' currencies.

The best means of insuring international responsibility in monetary affairs is the gold standard. This has always been true. Since gold cannot be mined rapidly enough to create mass inflation, it retains its value over long periods of time. For example, the stability of British wholesale prices between 1821 and 1914 was remarkable.[6] Central banks can demand payment of debts in gold, or in currencies which are (supposedly) 100 per cent redeemable in gold. The banks can then use these foreign securities as a base on which to expand their own credit systems, on the assumption that the debtors' promises are as good as gold. At present, central banks hold American dollars and British pounds sterling in lieu of gold – or more accurately, they hold interest-bearing bonds and securities that are supposedly convertible into gold at any time.

The Dilemma

Here is the basis of the conflict between domestic and international economic policies. Gold is presently necessary to support international trade and to maintain international trust in the two key currencies, the dollar and the pound. On the other hand, both Britain and the United States have printed more paper and credit IOU's to gold than they have to redeem all outstanding claims. The domestic inflations have kept their postwar booms going, but now the trust abroad in both currencies is weakened. It is becoming clear that either the domestic inflations must stop, or else the key currencies are going to experience an international "bank run" on their gold reserves. Domestic inflation, in short, is the sole cause of the gold outflow in both the United States and Britain. Since 1960, the U. S. Treasury's stock of gold has been cut in half, and at the present time, there are foreign claims outstanding for over twice the amount of gold than the United States has in reserve (including that gold which is supposed to support our domestic credit and currency).

Jacques Rueff, a French economist, certainly cannot be criticized for these words: "How can you expect a creditor to remain passive when he sees every day an increase in monetary liabilities and a decrease of the gold available to repay them? That is where you get a 'scissors phenomenon.' The U. S.

[6] Arthur Kemp, "The Gold Standard: A Reappraisal," in Leland B. Yeager (ed.), *In Search of a Monetary Constitution* (Cambridge, Mass.: Harvard University Press, 1962), p. 148.

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is caught between the blades of the scissors."[7] Yet Rueff is sneered at as France's "palace economist," as if the truth of a principle were the monopoly of the French. De Gaulle is castigated as economically insane for his attempt to claim what is legally his, the gold to which his country holds legal claims. The United States has contracted debts; it now is faced with the prospect of not being able to meet its debts. The issue is really very simple.

If higher interest rates are not offered in the United States and in Britain, then foreign investors and central banks will cash in their investments and demand payment in gold. On the other hand, if interest rates are permitted to climb higher, the domestic rate of growth will be drastically affected. Money will be "too tight," too expensive for the prospective borrowers. Hence, the "scissors effect." There is no simple solution to the problem.

In 1964, the United States lost some $385 million in gold; in 1965, the loss tripled, amounting to over $1.1 billion. In the first six months of 1966, the outflow was almost $300 million.[8] The costs of the war in Viet Nam are increasing the deficit in the budget. In Britain, Prime Minister Wilson has been forced to declare a price and wage freeze in order to halt the inflationary rise in prices; this, of course, is repressed inflation – the hampering of the market by government controls – and not a cure. But at least political leaders in the two nations have come to the realization that continued deficits and continued increases in the money supply (apart from increases in gold and silver) cannot go on much longer without serious repercussions in the world money market, and hence, in the world's trading community.

The Search for Substitutes

Thus, we can understand the frantic search for a nongold international medium of payment. The economic isolationism which always results from domestic inflations cannot be permitted to disrupt the fabric of international integration and trade. Devaluation (charging more dollars or pounds for a given quantity of gold) could easily destroy the confidence in both currencies, and thus result in international economic chaos. Mutual distrust would then be the order of the day in all international transactions. The problem is that no substitute for gold has yet been discovered (or created) by mankind; and gold, because of its re-

[7] Interview with Rueff in *U. S. News & World Report* (Oct. 17, 1966), p. 61.

[8] Computed from the tables in *Mineral Industry Surveys* (Washington, D. C.: Bureau of Mines, Aug., 1966), p. 3.

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sistance to "full employment" inflationary policies, is taboo. What is needed, we are told, is something "as good as gold," yet which permits domestic inflation. There are numerous suggestions for such an international money, probably under the control of the International Monetary Fund, but no single plan has reached even partial acceptance by the economists and officials of the nations involved.[9] A fundamental obstacle to be overcome is the basic division between the central banks and the governments: certain policies which are favorable for one group are harmful for the other. Paul H. Douglas, in his recent study of world trade, attempts to find a synthesis of these various schemes, but even his powers of exposition fail him.[10] The solution to the dilemma has not been found, and time (and gold) is running out.

Why Gold?

A full gold coin standard would unquestionably solve the problem of international acceptance and solvency. Gold has always functioned as the means of international payment, and there is no reason to suppose that it will not in the future (assuming that prices and wages are permitted to adjust on an international free market). The opposition to gold in international trade is based upon ideological assumptions which are hostile to the idea of the free market economy. Gold would insure monetary stability, if that were what the economists and legislators really wanted. It would insure too much stability to suit them, and this is the point of contention. As the late Professor Charles Rist once wrote:

> In reality, those theoreticians dislike monetary stability, because they dislike the fact that by means of money the individual may escape the arbitrariness of the government. Stable money is one of the last arms at the disposal of the individual to direct his own affairs, whether it be an enterprise or a household. It is certain that nothing so facilitates the seizure of all activities by the government as its liberty of action in monetary matters. If the partisans of [unbacked] paper money really desire monetary stability, they would not oppose so vehemently the reintroduction of the only system that has ever insured it, which is the system of the gold standard.[11] ◈

[9] For a summary of these positions, or at least of the leading ones, see Arthur Kemp, *The Role of Gold* (Washington, D. C.: American Enterprise Institute, 1963).

[10] Paul H. Douglas, *America in the Market Place* (New York: Holt, Rinehart and Winston, 1966).

[11] Charles Rist, *The Triumph of Gold* (New York: Philosophical Library, 1960), p. 139.

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HOW SHOULD PRICES BE DETERMINED?

HENRY HAZLITT

"How should prices be determined?" To this question we could make a short and simple answer: Prices should be determined by the market.

The answer is correct enough, but some elaboration is necessary to answer the practical problem concerning the wisdom of government price control.

Let us begin on the elementary level and say that prices are determined by supply and demand. If the relative demand for a product increases, consumers will be willing to pay more for it. Their competitive bids will both oblige them individually to pay more for it and enable producers to get more for it. This will raise the profit margins of the producers of that product. This, in turn, will tend to attract more firms into the manufacture of that product, and induce existing firms to invest more capital into making it. The increased production will tend to reduce the price of the product again, and to reduce the profit margin in making it. The increased investment in new manufacturing equipment may lower the cost of production. Or – particularly if we are concerned with some extractive industry such as petroleum, gold, silver, or copper – the increased demand and output may raise the cost of production. In any case, the price will have a definite effect on demand,

Mr. Hazlitt is the well-known economic and financial analyst, columnist, lecturer, and author of numerous books.

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output, and cost of production just as these in turn will affect price. All four – demand, supply, cost, and price – are interrelated. A change in one will bring changes in the others.

Direct and Indirect Price Interrelationships

Just as the demand, supply, cost, and price of any single commodity are all interrelated, so are the prices of all commodities related to each other. These relationships are both direct and indirect. Copper mines may yield silver as a by-product. This is connexity of production. If the price of copper goes too high, consumers may substitute aluminum for many uses. This is a connexity of substitution. Dacron and cotton are both used in drip-dry shirts; this is a connexity of consumption.

In addition to these relatively direct connections among prices, there is an inescapable interconnexity of all prices. One general factor of production, labor, can be diverted, in the short run or in the long run, directly or indirectly, from one line into any other line. If one commodity goes up in price, and consumers are unwilling or unable to substitute another, they will be forced to consume a little less of something else. All products are in competition for the consumer's dollar; and a change in any one price will affect an indefinite number of other prices.

No single price, therefore, can be considered an isolated object in itself. It is interrelated with all other prices. It is precisely through these interrelationships that society is able to solve the immensely difficult and always changing problem of how to allocate production among thousands of different commodities and services so that each may be supplied as nearly as possible in relation to the comparative urgency of the need or desire for it.

Because the desire and need for, and the supply and cost of, every individual commodity or service are constantly changing, prices and price relationships are constantly changing. They are changing yearly, monthly, weekly, daily, hourly. People who think that prices normally rest at some fixed point, or can be easily held to some "right" level, could profitably spend an hour watching the ticker tape of the stock market, or reading the daily report in the newspapers of what happened yesterday in the foreign exchange market, and in the markets for coffee, cocoa, sugar, wheat, corn, rice, and eggs; cotton, hides, wool, and rubber; copper, silver, lead, and zinc. They will find that none of these prices ever stands still. This is why the constant attempts of gov-

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ernments to lower, raise, or freeze a particular price, or to freeze the interrelationship of wages and prices just where it was on a given date ("holding the line") are bound to be disruptive wherever they are not futile.

Price Supports for Export Items

Let us begin by considering governmental efforts to keep prices up, or to raise them. Governments most frequently try to do this for commodities that constitute a principal item of export from their countries. Thus Japan once did it for silk and the British Empire for natural rubber; Brazil has done it and still periodically does it for coffee; and the United States has done it and still does it for cotton and wheat. The theory is that raising the price of these export commodities can only do good and no harm domestically because it will raise the incomes of domestic producers and do it almost wholly at the expense of the foreign consumers.

All of these schemes follow a typical course. It is soon discovered that the price of the commodity cannot be raised unless the supply is first reduced. This may lead in the beginning to the imposition of acreage restrictions. But the higher price gives an incentive to producers to increase their average yield per acre by planting the supported product only on their most productive acres, and by more intensive employment of fertilizers, irrigation, and labor. When the government discovers that this is happening, it turns to imposing absolute quantitative controls on each producer. This is usually based on each producer's previous production over a series of years. The result of this quota system is to keep out all new competition; to lock all existing producers into their previous relative position, and therefore to keep production costs high by removing the chief mechanisms and incentives for reducing such costs. The necessary readjustments are therefore prevented from taking place.

Meanwhile, however, market forces are still functioning in foreign countries. Foreigners object to paying the higher price. They cut down their purchases of the valorized commodity from the valorizing country, and search for other sources of supply. The higher price gives an incentive to other countries to start producing the valorized commodity. Thus, the British rubber scheme led Dutch producers to increase rubber production in Dutch dependencies. This not only lowered rubber prices, but caused the British to lose permanently their previous monopolistic position. In addition,

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the British scheme aroused resentment in the United States, the chief consumer, and stimulated the eventually successful development of synthetic rubber. In the same way, without going into detail, Brazil's coffee schemes and America's cotton schemes gave both a political and a price incentive to other countries to initiate or increase production of coffee and cotton, and both Brazil and the United States lost their previous monopolistic positions.

Meanwhile, at home, all these schemes require the setting up of an elaborate system of controls and an elaborate bureaucracy to formulate and enforce them. This has to be elaborate, because each individual producer must be controlled. An illustration of what happens may be found in the United States Department of Agriculture. In 1929, before most of the crop control schemes came into being, there were 24,000 persons employed in the Department of Agriculture. Today there are 109,000. These enormous bureaucracies, of course, always have a vested interest in finding reasons why the controls they were hired to enforce should be continued and expanded. And of course these controls restrict the individual's liberty and set precedents for still further restrictions.

None of these consequences seem to discourage government efforts to boost prices of certain products above what would otherwise be their competitive market levels. We still have international coffee agreements and international wheat agreements. A particular irony is that the United States was among the sponsors in organizing the international coffee agreement, though its people are the chief consumers of coffee and therefore the most immediate victims of the agreement. Another irony is that the United States imposes *import* quotas on sugar, which necessarily discriminate in favor of some sugar exporting nations and therefore against others. These quotas force all American consumers to pay higher prices for sugar in order that a tiny minority of American sugar cane producers can get higher prices.

I need not point out that these attempts to "stabilize" or raise prices of primary agricultural products *politicalize* every price and production decision and create friction among nations.

Holding Prices Down

Now let us turn to governmental efforts to *lower* prices or at least to keep them from rising. These efforts occur repeatedly in most nations, not only in wartime, but in any time of inflation. The typical process is something like this.

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The government, for whatever reason, follows policies that increase the quantity of money and credit. This inevitably starts pushing up prices. But this is not popular with consumers. Therefore, the government promises that it will "hold the line" against further price increases.

Let us say it begins with bread and milk and other necessities. The first thing that happens, assuming that it can enforce its decrees, is that the profit margin in producing necessities falls, or is eliminated, for marginal producers, while the profit margin in producing luxuries is unchanged or goes higher. This reduces and discourages the production of the controlled necessities and relatively encourages the increased production of luxuries. But this is exactly the opposite result from what the price controllers had in mind. If the government then tries to prevent this discouragement to the production of the controlled commodities by keeping down the cost of the raw materials, labor and other factors of production that go into them, it must start controlling prices and wages in ever-widening circles until it is *finally trying to control the price* of everything.

But if it tries to do this thoroughly and consistently, it will find itself trying to control literally millions of prices and trillions of price cross-relationships. It will be fixing rigid allocations and quotas for each producer and for each consumer. Of course these controls will have to extend in detail to both importers and exporters.

Necessary Price Flexibility

If a government continues to create more currency on the one hand while rigidly holding down prices with the other, it will do immense harm. And let us note also that even if the government is not inflating the currency, but tries to hold either absolute or relative prices just where they were, or has instituted an "incomes policy" or "wage policy" drafted in accordance with some mechanical formula, it will do increasingly serious harm. For in a free market, even when the so-called price "level" is not changing, all prices are constantly changing in relation to each other. They are responding to changes in costs of production, of supply, and of demand for each commodity or service.

And these price changes, both absolute and relative, are in the *overwhelming main both necessary* and desirable. For they are drawing capital, labor, and other resources out of the production of goods and services that are less

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wanted and into the production of goods and services that are more wanted. They are adjusting the balance of production to the unceasing changes in demand. They are producing thousands of goods and services in the relative amounts in which they are socially wanted. These relative amounts are changing every day. Therefore the market adjustments and price and wage incentives that lead to these adjustments must be changing every day.

Price Control Distorts Production

Price control always reduces, unbalances, distorts, and discoordinates production. Price control becomes progressively harmful with the passage of time. Even a fixed price or price relationship that may be "right" or "reasonable" on the day it is set can become increasingly unreasonable or unworkable.

What governments never realize is that, so far as any individual commodity is concerned, the cure for high prices is high prices. High prices lead to economy in consumption and stimulate and increase production. Both of these results increase supply and tend to bring prices down again.

Very well, someone may say; so government price control in many cases is harmful. But so far you have been talking as if the market were governed by perfect competition. But what of monopolistic markets? What of markets in which prices are controlled or fixed by huge corporations? Must not the government intervene here, if only to enforce competition or to bring about the price that real competition would bring if it existed?

Unwarranted Fears of Monopoly

The fears of most economists concerning the evils of "monopoly" have been unwarranted and certainly excessive. In the first place, it is very difficult to frame a satisfactory definition of economic monopoly. If there is only a single drug store, barber shop, or grocery in a small isolated town (and this is a typical situation), this store may be said to be enjoying a monopoly in that town. Again, everybody may be said to enjoy a monopoly of his own particular qualities or talents. Yehudi Menuhin has a monopoly of Menuhin's violin playing; Picasso of producing Picasso paintings; Elizabeth Taylor of her particular beauty and sex appeal; and so for lesser qualities and talents in every line.

On the other hand, nearly all economic monopolies are limited by the possibility of substitution. If copper piping is priced too high, consumers can substitute steel or plastic; if beef is too high,

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consumers can substitute lamb; if the original girl of your dreams rejects you, you can always marry somebody else. Thus, nearly every person, producer, or seller may enjoy a quasi monopoly within certain inner limits, but very few sellers are able to exploit that monopoly beyond certain outer limits. There has been a tremendous literature within recent years deploring the absence of perfect competition; there could have been equal emphasis on the absence of perfect monopoly. In real life competition is never perfect, but neither is monopoly.

Unable to find many examples of perfect monopoly, some economists have frightened themselves in recent years by conjuring up the specter of "oligopoly," the competition of the few. But they have come to their alarming conclusions only by inserting in their own *hypotheses* all sorts of imaginary secret agreements or tacit understandings between large producing units, and deducing what the results could be.

Now the mere *number* of competitors in a particular industry may have very little to do with the existence of effective competition. If General Electric and Westinghouse effectively compete, if General Motors and Ford and Chrysler effectively compete, if the Chase Manhattan and the First National City Bank effectively compete, and so on (and no person who has had direct experience with these great companies can doubt that they dominantly do), then the result for consumers, not only in price, but in quality of product or service, is not only as good as that which would be brought about by atomistic competition but much better, because consumers have the advantage of large-scale economies, and of large-scale research and development that small companies could not afford.

A Strange Numbers Game

The oligopoly theorists have had a baneful influence on the American antitrust division and on court decisions. The prosecutors and the courts have recently been playing a strange numbers game. In 1965, for example, a Federal district court held that a merger that had taken place between two New York City banks four years previously had been illegal, and must now be dissolved. The combined bank was not the largest in the city, but only the third largest; the merger had in fact enabled the bank to compete more effectively with its two larger competitors; its combined assets were still only one-eighth of those represented by all the banks of the city; and the merger itself had reduced the

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number of separate banks in New York from 71 to 70. (I should add that in the four years since the merger the number of *branch* bank offices in New York City had *increased* from 645 to 698.) The court agreed with the bank's lawyers that "the general public and small business have benefited" from bank mergers in the city. Nevertheless, the court continued, "practices harmless in themselves, or even those conferring benefits upon the community, cannot be tolerated when they tend to create a monopoly; those which restrict competition are unlawful no matter how beneficent they may be."

It is a strange thing, incidentally, that though politicians and the courts think it necessary to forbid an existing merger in order to increase the number of banks in a city from 70 to 71, they have no such insistence on big numbers in competition when it comes to political parties. The dominant American theory is that just two political parties are enough to give the American voter a real choice; that when there are more than this it merely causes confusion, and the people are not really served. There is this much truth in this political theory as applied in the economic realm. If they are really competing, only two firms in an industry are enough to create effective competition.

Monopolistic Pricing

The real problem is not whether or not there is "monopoly" in a market, but whether there is monopolistic pricing. A monopoly price can arise when the responsiveness of demand is such that the monopolist can obtain a higher net income by selling a smaller quantity of his product at a higher price than by selling a larger quantity at a lower price. It is assumed that in this way the monopolist can realize a higher price than would have prevailed under "pure competition."

The theory that there can be such a thing as a monopoly price, higher than a competitive price would have been, is certainly valid. The real question is, how *useful* is this theory either to the supposed monopolist in deciding his price policies or to the legislator, prosecutor, or court in framing anti-monopoly policies? The monopolist, to be able to exploit his position, must know what the "demand curve" *is* for his product. He does not know; he can only guess; he must try to find out by trial and error. And it is not merely the unemotional price response of the consumers that the monopolist must keep in mind; it is what the effect of his pricing policies will probably be in gaining the goodwill or arousing the resentment of the consumer. More

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importantly, the monopolist must consider the effect of his pricing policies in either encouraging or discouraging the entrance of competitors into the field. He may actually decide that his wisest policy in the long run would be to fix a price no higher than he thinks pure competition would set, and perhaps even a little lower.

In any case, in the absence of competition, no one *knows* what the "competitive" price would be if it existed. Therefore, no one knows exactly how much higher an existing "monopoly" price is than a "competitive" price would be, and no one can be sure whether it is higher at all!

Yet antitrust policy, in the United States, at least, assumes that the courts can know how much an alleged monopoly or "conspiracy" price is above the competitive price that might-have-been. For when there is an alleged conspiracy to fix prices, purchasers are encouraged to sue to recover three times the amount they were allegedly forced to "overpay."

Avoid Price-Fixing

Our analysis leads us to the conclusion that governments should refrain, wherever possible, from trying to fix either maximum or minimum prices for anything. Where they have nationalized any service – the post office or the railroads, the telephone or electric power – they will of course have to establish pricing policies. And where they have granted monopolistic franchises – for subways, railroads, telephone or power companies – they will of course have to consider what price restrictions they will impose.

As to antimonopoly policy, whatever the present condition may be in other countries, I can testify that in the United States this policy shows hardly a trace of consistency. It is uncertain, discriminatory, retroactive, capricious, and shot through with contradictions. No company today, even a moderate sized company, can know when it will be held to have violated the antitrust laws, or why. It all depends on the economic bias of a particular court or judge.

There is immense hypocrisy about the subject. Politicians make eloquent speeches against "monopoly." Then they will impose tariffs and import quotas intended to protect monopoly and keep out competition; they will grant monopolistic franchises to bus companies or telephone companies; they will approve monopolistic patents and copyrights; they will try to control agricultural production to permit monopolistic farm prices. Above all, they will not only permit but impose labor monopolies on employers, and legally com-

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pel employers to "bargain" with these monopolies; and they will even allow these monopolies to impose their conditions by physical intimidation and coercion.

I suspect that the intellectual situation and the political climate in this respect is not much different in other countries. To work our way out of this existing legal chaos is, of course, a task for jurists as well as for economists. I have one modest suggestion: We can get a great deal of help from the old common law, which forbids fraud, misrepresentation, and all *physical* intimidation and coercion. "The end of the law," as John Locke reminded us in the seventeenth century, "is not to abolish or restrain, but to preserve and enlarge freedom." And so we can say today that in the economic realm, the aim of the law should not be to constrict, but to maximize price freedom and market freedom. ◈

IDEAS ON LIBERTY

Rule of Law

ARBITRARY POWER, enforcing its edicts to the injury of the persons and property of its subjects, is not law, whether manifested as the decree of a personal monarch or of an impersonal multitude. And the limitations imposed by our constitutional law upon the action of the government, both State and national, are essential to the preservation of public and private rights, notwithstanding the representative character of our political institutions. The enforcement of these limitations by judicial process is the device of self-governing communities to protect the rights of individuals and minorities, as well against the power of numbers, as against the violence of public agents transcending the limits of lawful authority, even when acting in the name and wielding the force of government.

JUSTICE MATHEW in *Hurtado* v. *California*, 110 U.S. p. 535

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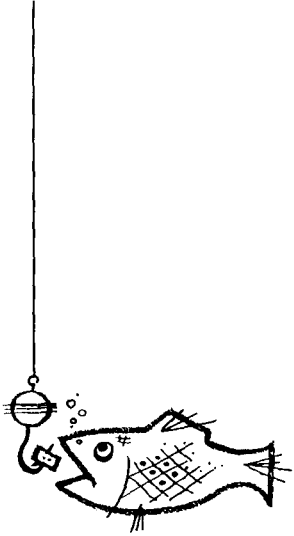
CLARENCE B. CARSON

THE BAIT & THE HOOK



MAN'S DOMINION over the animal kingdom is often precariously maintained. Most animals have some one trait or more which makes them superior in that respect to man. They can run, fly, or swim faster, can inject a venom, can bite, are large and powerful, are small and difficult to locate, can go through places which men avoid, or have some other capacity which makes them difficult for man to dominate. Moreover, most animals do not submit readily to man's dominion; they attempt to elude him when he tries to capture them and try to escape once captured. In a sense, it is valid to say that animals relish their freedom — that is, like to follow their instincts, to go where they will, to roam in that niche of nature that is particularly suited to them.

First and last, men have devoted a great deal of energy and ingenuity in order to snare, catch, land, capture, trap, hook, corral, pen, and fence animals. Some of these methods have become stereotyped and are virtually universal. They frequently involve efforts to conceal from the animal what is being done. A runaway hog may be captured by laying down a trail of corn that will lead him back to the pen. It may be necessary when he gets in sight of the pen to drive him in with sticks. Mice are apprehended by setting a trap with cheese. Larger animals are captured by baiting a steel trap, or a box, with some delicacy prized by the animal sought.

Perhaps more people in our era

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devote more ingenuity and effort to catching fish than to the capture of any other animal. It is a game which many find endlessly fascinating. The classic device for catching a fish is to bait a hook with a worm and dangle it in the water. Ideally, the worm is stretched over the hook in such a way that the fish will swallow the hook before he knows he has anything but the worm. Once the hook is set, the more the fish pulls to try to get away, the deeper the hook fastens into him. Much more sophisticated equipment is now common, including artificial lures, rods and reels, and so on. Fishermen pride themselves on the techniques by which they lure the fish to his death.

Gaining Dominion Over Men

Some men have devoted a great deal of energy and ingenuity, too, to gaining dominion over other men. Strangely enough, it appears that men are more susceptible to domination by force or the threat of force than are many animals. Since men are more intelligent than animals, they recognize a broader spectrum of dangers; their efforts to avoid injury often allow them to be dominated by the presence of force. At any rate, force usually has been used to some extent by those who would gain dominion over men. Quite often, this use of force has been accompanied by a rationale and religious or social sanctions.

In America in the twentieth century, very subtle stratagems have been used to gain and extend control over men, the instrument of control being government. The necessity for stratagems can be found in the American outlook and the system of government. According to the general belief, Americans are free and are devoted to keeping and extending that freedom. Those who govern are not supposed to seek power over their fellow Americans, do not profess to want it, and would be loath to exercise it if they had it. Our lore has it that those in government are our servants and we their masters. Yet, government has vastly extended its control over the lives of the citizenry in the twentieth century. Those who have to face the assorted bureaucrats who exercise political power should have little doubt that the bureaucrats are the masters and we the servants.

This extension of government power has been subtly advanced, acquired, and exercised in ways analogous to capturing animals. The hook has been baited, the trap set with goodies, and the path to the pen strewn with morsels. The figure of speech commonly used to describe such tactics – one as-

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sociated with English Fabian socialists – is the carrot and the stick. This suggests that we are led and driven along the way to subjection to the state – or to some collectivity – by alternate and judicious uses of the carrot and the stick. The phrase is graphic and appropriate, but the bait and the hook may be even more apt. The bait by which people have been led to take the hook of government power has often concealed the hook much better than a carrot conceals a stick. No matter what figure is used, the important point is that subtle stratagems have helped politicians and their spokesmen gain control over Americans.

A Case of Urban Renewal

For example, the political leaders of the community where I live are trying to get an Urban Renewal project underway. The inhabitants were surveyed to find out what they thought of Urban Renewal, among other things. A majority of respondents favored the participation of the community in Urban Renewal. Some, though opposed to such programs as Urban Renewal, said that since it was in operation, this community might as well get its share. The newspaper report of the survey gave no indication that those who felt this way were looking beyond what they took to be the benefits of the program. They took the bait, apparently unaware of the hook it concealed.

Of course, the hook was there; a hook by which the citizens could be reeled in and brought under governmental power in new ways. Already the power is being wielded here, as in so many other communities. In order to participate in Urban Renewal, it is necessary for a municipality to have a building code, among other things. The code must be the one recommended by the appropriate agency of the Federal government, or one comparable to it. A permit must be obtained before projected construction can begin. A new structure must be a minimum distance from the boundary of adjoining land, must conform to various structural requirements, must have a certain minimum of electrical outlets, and so on. An official, or officials, of the local government is empowered to inspect structures and obtain their conformity to his interpretation of the code. Thus, what was once private property and the affair of the owner is brought under the control of political power which reaches back to Washington.

In this case, the hook was not baited with a live worm; an artificial lure was used. The notion that it is desirable for a commun-

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ity to get its "share" of the Federal bounty passed out in Urban Renewal is not based upon anything substantial so far as the individual members of the community are concerned. That people would want their share would be understandable, even if deplorable, if the Federal largess were divided equally among the citizens.

Artificial Lures

When a hook is baited with a worm, the fish that swallows it gets something. It is not so for most people with Urban Renewal. All taxpayers contribute to the support of it, but few reap any direct benefits. Someone who covets another's land may be able to induce the powers that be to confiscate it and sell it to him. Some of those in the construction business may be provided with building opportunities. Most of the citizenry get nothing, however. Some of them have their dwellings and businesses taken from them and torn down. They will be displaced from their neighborhoods and places where they do business. Many will suffer the inconvenience of not having familiar stores in which to shop, or the pressure of overcrowding that will occur. If new buildings are ever built to replace the old ones, all will, of course, receive the "social benefit" of viewing what some bureaucrat has decided is architecturally congruous for that neighborhood. The government of the community in which I live does not pay dividends; "shares" of Federal bounty are not distributed among the citizens.

In the Transport Field

Sometimes the bait is real, sometimes not, but the bait and the hook is a well-established practice of governments in the United States. It has been used for nearly a hundred years now. It may well be that the first uses were not intended as bases for extending government power, but those intent upon such extension have found the grant of any government favor a handy excuse for their purposes. One of the first major forays of the Federal government into the field was the granting of land and the making of loans for the construction of transcontinental railroads during and after the Civil War. States and local governments also granted various favors to railroad builders.

These grants and loans were not originally tied to any regulation of the railroads. But by the 1870's pressure was mounting for regulation, particularly in the Midwest. Initially, states began laying down rules for the operation of railroads within their borders. The 1880's brought Federal inter-

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vention by way of the Interstate Commerce Act. Since that time, the railroads have been seriously regulated and interfered with by governments. They have been the subject of rate fixing, antitrust legislation, merger control, special legislation for employees, Interstate Commerce Commission and court decisions as to what services to provide, provisions regarding the issuance of passes, and so on.

The justification for this regulation has not been based primarily upon the special favors initially granted to railroads; this has been a subsidiary point in the argument for control. Instead, the main argument has been that railroads provide an important "public" service, that they are a sort of public utility. Yet, this is linked to the original justification for making the grants and loans, that is, that it was in the public interest to have the railroads built. The bait and the hook were joined together through this "public interest" justification.

Another bait used in transportation was (and is) the charter or franchise. The franchise is an old mercantilistic device for granting a monopoly, but in recent times it has served as the basis for extensive regulation. Street railways usually were developed by private companies which had franchises to do so. In the course of time, these companies, which later supplemented or replaced streetcars with buses, were so intricately controlled that they could no longer make sufficient profit to stay in business. In many large cities today, the franchises have been taken over by agencies of the municipal governments, such as port authorities, and are operated at a loss. The bait was the franchise; the hook was the regulation.

Other Modern Interventions

In the twentieth century, of course, this technique of extending government power has become a fine art. Labor unions are granted exemptions and special privileges, farmers are granted subsidies and special concessions, and businesses get government contracts. Banks get charters, the deposits of their clientele insured, and guaranteed mortgages. Schools get state aid and then Federal aid. Manufacturers are enabled to maintain high prices by selling their "surplus" to government for stockpiling. The aged get pensions and the young get aid to dependent children. Special loans are made available to those in certain categories who want to buy a home. Shipping companies and airlines are subsidized. Hospitals are built with the aid of government subsidies. Grants-in-aid are provided for states and municipalities.

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Those of various skills and professions get licenses which entitle them to practice or perform and exclude those who do not possess such authorization.

The bait is tantalizing indeed. The force of government is used to attain for men and groups what they might not be able to obtain if they relied on voluntary methods. However well it may be concealed, the hook is always there. The bait may be nearly consumed before the hook is felt. Farm subsidies carry with them crop restrictions, allotments, and, on occasion, quality controls. Farmers lose significant control over the use of their land. Banks are subjected to government audits, the fixing of interest rates, and to various pressures from government agencies. In many ways, banks have become an arm of the government. Labor unions have to submit to "cooling off" periods before they can strike, are subject to the National Labor Relations Board, are generally forbidden to strike against government, and the day appears to be approaching when many of them will be forbidden by law to strike against private employers. Employers are subjected to arbitrary rulings by the courts and the National Labor Relations Board, and have, in many instances, lost authority over their employees. At any rate, an individual employee may have to join a union to work at the job for which he is trained, may have to accept the decision of the majority of those in his industry as to whether he will work or strike, is subject to the courts and National Labor Relations Board as to what his "rights" are, and may be forced by government to work or lose his employment.

Recently, some aluminum companies decided to raise their prices. This conflicted with government policy; and, when the companies appeared to be determined upon their course, the Federal government announced that it would sell part of the aluminum in its stockpile. If this were children playing games, it would be appropriate to say that turn about is fair play. After all, the companies had been favored by the government purchase of aluminum in the first place. But this was an irresponsible use by government of money taken from the citizenry. Even so, it is an example of taking the bait and then getting the hook.

Subsidized and Controlled

Public schools have received the favor of monies from state and Federal government. In consequence, they have been subjected to progressively greater control by these governments. Not much has been made of the progressive

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centralization of control over local schools by state governments, though it has gone on apace. Now, Federal control is following in this path. A magazine article pointed out the slipshod way in which those holding out the bait of Federal aid attempt to conceal the hook:

Those who favor federal intervention generally claim it is not intended to usurp the power of local school authorities to run their schools as they see fit. Federal aid legislation is almost always prefaced by such a disclaimer, as was the National Defense Education Act when it became law in 1958. Despite its statement that nothing in the Act "shall be construed to authorize any department, agency, officer or employe of the United States to exercise any direction, supervision or control over the curriculum, program of instruction, administration, or personnel of any education institution or school system" this Act goes on to set forth numerous regulations and standards which local schools must meet to qualify for federal assistance!

As one teacher said:

To get this money we have to accept and adopt the course of study outlined and specified by the federal government through the state department. We have to permit inspection trips by state employees who receive part of their money from the federal government. We have to hire teachers whose qualifications are approved by the same groups. We have to send our teachers to conferences designated by these authorities.[1]

Examples are too numerous to go into in detail. There is the intrusion into the lives of recipients of welfare checks by social workers. There is the portending control of medicine by the Federal government. There are the intricate regulations of radio, television, airlines, and shipping. There is talk of compulsory sterilization of repeaters among unwed mothers. There is the ubiquitous spread of government power into virtually every area into which it is preceded by favors.

The Will to Resist

Just as the fish drives the barbs deeper when he struggles against the hook, so, quite often, do those who resist government control find themselves subjected to greater force. Many businessmen have long since ceased to fight the extension of government power over them. Just as a wary fish might do, they try by gentle tugs on the line to get more leeway within which to operate, unaware that they are being worn down by their efforts and made ready for landing. Many businessmen have learned that if they resist, they

[1] "The Real Crisis in Our Schools: Federal Domination," *Nation's Business*, XLVIII (March, 1960), 59.

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will be subjected to harassment, to threatened prosecution under the antitrust laws, to close examination of their income tax returns, to loss of government contracts, and to new regulations more onerous than the ones now applicable. Labor union leaders are beginning to feel the hook subject to threats that they either do voluntarily what government wants or be forced to do it. Any resistance by the medical profession is likely to be interpreted as an excuse for tightening control. Businessmen who read the handwriting on the wall may know that if they do not "voluntarily" accept government guidelines for prices they will be subject to government-fixed prices.

Of course, there are aspects of the government's extension of favors and force to which the analogy of the fisherman with his bait and hook is not appropriate. The fisherman provides his own bait and tackle as well as his boat. The government, by contrast, provides its favors from money taken from the taxpayer by force or the threat of force. That is, our goods are first taken from us by government which then uses them to entice us into its orbit of control. Some do, of course, receive favors who paid no taxes; others receive more than they paid in. But the redistribution features do not alter the nature of what is being done. We are getting hooked when we reach for the bait that was taken from us in the first place.

The Gradual Approach to Full-Blown Tyranny

The above tactics are the American version of Fabian socialism. They are the means by which Americans are drawn step by step into what would be billed as socialism if we were being semantically honest. More precisely, it is the gradual development of statism. Each time some sucker reaches for the bait and is hooked, the power of government is increased. Each extension of government power by regulation, control, restriction, and so on is at the expense of the control by individuals of their own lives. This power is usually vested in the assorted members of an expanded and expanding bureaucracy, in independent commissions, in bureaus headed by cabinet members, in experts, in that numerous clan who make their living by deciding what prices others shall charge for their services, how many acres farmers can plant to what crop, whether train services shall be continued, what union shall be recognized by what company, the proper length for commercials on television, and so on *ad nauseum*.

These bureaucrats are tyrants,

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but, oh, such petty tyrants! Men might fight a Genghis Khan, but it is difficult to know what weapons to use against men whose tyranny consists of arbitrary decisions about whether a railroad shall be permitted to discontinue a freight station in a hamlet of 200 people or not, whether each bathroom in a house must be vented or whether one vent can serve all of them, whether a new product shall be subjected to another round of testing or not, and so on. Prudent men hesitate to rush to arms to make war on mosquitos. Yet, when all the bits of petty tyranny are added, the total is a monumental tyranny which filters into every area of life.

According to the lore of fishermen – not always the most reliable – some fish become unusually canny. There are stories, at least, of very large fish who survive in a limited area the attempts of fishermen to catch them. At most, they only nibble at the bait; they cannot be snared by the hook. Whether or not there are such fish, I do not know, but the stories offer a valuable lesson for men. The best way – the only sure way – to avoid the hook is to refuse the bait. No sensible man today has any reason to doubt that Federal control will follow Federal aid, that government subsidies will be followed by government restrictions, that behind the attractive bait there are the ugly barbs of political power. Even the nibbler can be caught by the crafty fisherman, for such a fisherman tugs gently at the line to get the fish to jump at the bait and get himself hung on the hook. Men who seek dominion over other men in our day have become crafty fishermen. Only those fish are safe who refuse the bait. Only those people remain free who renounce governmental favors. ◈

IDEAS ON LIBERTY

A Consequence of Compulsion

WHEN THE LAW, by means of its necessary agent, force, imposes upon men a regulation of labor, a method or a subject of education, a religious faith or creed – then the law is no longer negative; it acts positively upon people. It substitutes the will of the legislator for their own wills; the initiative of the legislator for their own initiatives. When this happens, the people no longer need to discuss, to compare, to plan ahead; the law does all this for them. Intelligence becomes a useless prop for the people; they cease to be men; they lose their personality, their liberty, their property.

FREDERIC BASTIAT, *The Law* 1850

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PROPHETS, JURISTS, AND PROPERTY

WILLIAM J. PALMER

THE MOST distinguishing characteristic of the human being is his urge to amplify the natural powers of his body and mind by inventing and creating devices and by the acquisition, ownership, and dealing with property. Through both of these activities he enters into relationships with other persons, into the realm of negotiations, agreements, and contracts, into the status of bearing personal obligations and responsibility, and into the demands of management. He increases his understanding of other humans and his foresight; he develops a capacity for personal, independent judgment; he learns the inevitable penalties for mistaken judgment and dishonesty and the equally inevitable rewards for good judgment and integrity. In summary, he grows in stature as a constructive, trustworthy being.

Out of this extension and enlargement of the person through the ownership of property and the related contractual activities come men and women qualified to do the big jobs, to carry the heavy responsibilities of our economic regime. For them we reserve one of the highest encomiums of our work-a-day lives and associations, namely, "His word is as good as his bond."

To cut off from the individual person the medium of self-extension and development provided by freedom to acquire and own prop-

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erty is to do damage to his person in analagous manner as cutting off an arm or a leg or destroying the sense of sight or of hearing would do to his body. It is an inevitable, logical result that to a mind that has suffered such damage, a mind molded in the philosophy and practices of communism, even a solemn treaty-contract carries no binding obligation, is only a device by which to buy time, to deceive or to gain some other advantage, a mere contractual form to be broken whenever to honor it would appear to be fraught with some disadvantage to the signing communist body.

The Law of Usefulness and Returns

When we turn to the larger, composite, social aspects of private ownership of property, as exhibited in our business corporations, we are compelled, if we would be true, to acknowledge this fact: In the long pull, such privately owned property can and does serve its owners only and commensurately as it serves all the people. Even as to personal holdings, basic data compiled by the Internal Revenue Service justify the conclusion that at least 85 per cent of the personal wealth of our wealthiest citizens is in the active service of the general, total economy in the form of corporation capital, government bonds, investments in insurance, bank accounts and loans, paying wages, creating tools, building homes, and providing security for others.

These facts are joined by another: the natural and particular concern that the private owner has for the care, improvement, and usefulness of his own property. The brevity of that observation should not obscure the far-reaching vitality and effectiveness of its truth. When we substitute the politician dealing with other people's money for the businessman dealing with his own, the result is certain to be extravagance and waste and often corruption and failure. A thousand and more examples of this truth, from our own governments and from around the world, could be cited if necessary. But no knowledgeable person needs such proof.

These conjoined facts give to private ownership and management an exclusively distinctive endowment for benefiting the whole economic and social structure. They constitute what Adam Smith referred to as an "invisible hand" serving the best interests of society. To use a metaphor that conforms with modern science, these factors might be called the genes that have determined the magnificent posture and performance of our organisms of private property and private adventure, and the ab-

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sence of which has determined the numerous failures of socialism and totalitarianism.

Modern Mythology

This is a unique period in human history for thoughtful people to spend a while focusing their thoughts on the concepts of private property and ownership. Current in the world is the notion which, stated with the same generality as it usually is expressed, assumes that an intrinsic antagonism exists between property rights and human rights. The conflicting factors intended to be denoted by the slogans and shibboleths are, on the one hand, the ownership of property by individual persons, and, on the other, the well-being of all members of a society.

Not only are large national groupings of the world's peoples under the absolute domination of autocrats who profess to believe that this notion is true, but in our own country the shibboleth is commonly used, or truth is implied in it, by seekers and holders of public office, demagogues, socialists, and communists. Into the minds of thousands of school and college students the notion has been implanted by teachers and by influences organized and directed from outside the school grounds and campuses.

Perhaps we ought promptly to dispatch this proposition that property rights are inimical to human rights by pointing to the illogicality and/or the insincerity of its proclaimers and apologists. What *they* seek to obtain is property, either directly for themselves or to hold or control, with autocratic power of distribution and dissipation. Property delivered *to them*, property controlled by or for them, is their own barked guarantee of human rights and their one cure for a real or alleged absence of such rights. They, themselves, are the arch proponents of the fantasy that property is the panacea for the ills, ignorance, indolence, evils, confusion, and muddles of mankind.

Although it is quite proper in controversial dialogue to thus dismiss a current myth or fallacy, it is for us, rather, to think constructively and to try, at least, to express truths that can flow into the mental vacuum wherever it may exist. Let us examine anew certain premises that we usually assume *a priori*. What are *the genuine* human values in which we are or ought to be concerned?

These are Human Values

The basic one, of course, is freedom. Lest there be misinterpretation or misrepresentation, let us substitute a term evolved in en-

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lightened political and juristic philosophy, namely, "civil liberty." This term embraces all the familiar inalienable rights of man. No fact has been more convincingly proved by history and no conclusion is logically more unavoidable than this: civil liberty is impossible without the right and freedom of individual persons through their own efforts to acquire and own property and to have all authority in the management of the same as will not infringe upon the equal rights of others and as will conform with a reasonable exercise of police power by government.

When, by some governing power, individual persons are deprived of opportunity to acquire and to own property, they necessarily are dependent upon and are the liegemen of the power that claims to own all property and, having means of violence to enforce its claims, exercises the prerogatives of ownership – whether that power be king, feudal lord, or ruling persons bearing any vestment of authority. All are vassals of the king, be he robed, crowned, and on a throne, or a coterie of commissars or an assembly or bureau of government officials, when the control of all property has been usurped by that king through myth, general ignorance, custom, deception, violence, or election.

The destiny of liberty is the destiny of the private ownership of property.

"A Man's Castle"

Another human value of inestimable significance is the home, the house-home which, upheld by enlightened Anglo-American jurisprudence, is a man's castle, a place of refuge, and a place for privacy. But a man's home cannot be his castle, a personal fortress, unless he, himself, owns the right of possession, a right that he acquires through ownership of either the fee title or a leasehold. A paternalistic, all-owning government might provide him revocable shelter, but whether that be in a hovel, a crowded room, apartment, or a palace, he never can receive from it the gratifications and the human values, nor the security, that derive from himself being the owner and master of a home.

Probably no human value surpasses that of the man who loves the fertile soil and the useful and beautiful creations that grow from it, who presides over an area of ground of which he can say: "This is my own," and on which he can labor in the near-God enterprises of tilling, planting, harvesting, and animal husbandry, knowing that the fruits of his toil and the earth's fertility will belong to him. He is the lord of what has been called "a corner of tranquillity,"

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wherein he knows the spiritual satisfactions of being a self-directed, free man. But no "corner of tranquillity" exists after predators, by violence or the inoculation of deceiving ideas, have stolen from individual persons their own and, through sneaking and violent devices of suppression, have closed the avenues for private ownership of property.

Control of Cultural Environment

Another human value is one which no intelligent person, having once enjoyed, will surrender willingly: the value derived from being free to create the cultural environment to which he and his family will be exposed and within which, patterns of thought, taste, and character will be formed. This value derives not alone from respecting his own thinking and judgment, but from being free to pursue them in the selection of books, newspapers, magazines, furnishings and decor, works of art, radio and television programs, other forms of entertainment, religious institutions, and methods of education.

But this immeasurable human value can be had only when numerous individual persons are the respective private owners of numerous properties: newspapers, publishing houses, churches, schools, factories, radio and television stations, theaters, mercantile establishments, banks and other financial institutions, and countless items of machinery and equipment.

The destiny of culture is the destiny of the private ownership of property.

The Means of Benevolence[1]

No attempt is being made here to inventory all the human values that are made possible by and are dependent upon the private ownership of property. Yet another ought to be mentioned, because, although not the most fundamental, it is the crowning, irradiating capstone of the structure. It consists of the coexistence of benevolent impulses in the psyche of the individual person and his private ownership of the means by which to materialize those impulses in charitable giving. It is doubtful if many of us have a fitting appreciation of the manifold, far-reaching fruitfulness of that human value, although its personal gratifications have been widely experienced.

A reliable estimate based on various records is that in 1963 gifts made by citizens and institutions of the United States to

[1] The data used in this section is taken from *Senior Scholastic*, December 9, 1964, p. 8 et seq. and 1966 *Reader's Digest Almanac*.

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philanthropic causes amounted to more than ten billion dollars. The varied purposes of those gifts embraced immediate help to the needy; religious activities; education in many areas; projects in art, literature, and other phases of culture; health, medical, and hospital care; scholarships, fellowships, advanced studies and research, and explorations in science.

Out beyond the realm of records and statistics, in those areas where countless kind persons ask no credit and no acclaim, are the continuing, numerous, silent gifts of money and valuable things from one to another.

Of the more than ten billion dollars in traceable charity, gifts totaling nearly eight billion dollars were those of individual persons. More than 50 million volunteer, unpaid persons, including three million of America's business and professional leaders, gave of their time and energy to carry on the benevolent services involved and to do the soliciting and gathering in of the gifts.

Nearly half of all this giving of private property was done for the support of churches and church-related activities, including church-affiliated hospitals. Another 15 per cent of the gifts made possible such welfare and educational activities as youth organizations, Boy Scouts, Girl Scouts, and similar programs, community planning for various phases of betterment, and projects for the prevention of juvenile delinquency.

Fifteen thousand foundations, endowed by gifts of private property, made possible major philanthropic enterprises by their contributions of 819 million dollars. Twenty-four of those foundations, the ones best known, having no purpose other than to promote through their benefactions the well-being and progress of human beings around the world, have assets of over six billion dollars.

The existence of numerous private schools and colleges, where independence of political controls and pressure groups can be retained, and religious and cultural ideals and disciplines can be maintained, is made possible only by gifts of private property. In the fiscal year, 1963-1964, 35 of the better known colleges and universities of our country received gifts totaling 343 million dollars. But numerous other colleges and universities received gifts. The total of all gifts of private property to education in one form or another in the year 1963 has been estimated to have been over one billion, seven hundred million dollars.

The contorted mind of the communist can only sneer at all this fruitage of human values from the private ownership of property. He

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would, if he could, destroy all the benevolent foundations. He tells you that under his system no charity is needed, because the state, claiming to own all property, renders to each of its proletariat according to his needs. He does not tell you that a handful of tyrants decide what everyone needs. He does not tell you that in their philosophy and absolutism, the greater portion of what is accomplished by our private charity is deemed to be not needed, is poison and hallucinatory to minds conditioned and regimented by the tyrants. And he does not tell you that no socialist society ever has been able to satisfy the reasonable needs of its people.

The Sum of Human Values

All the human values which reasonably can be expected to benefit the race can be summed up in these words: a valuable human. Use of this term requires us to confront two antithetic ideas of value. To the power-hungry or glory-seeking despot, a person is valuable only if he is useful to the ruler's ambition. He is an enmeshed part of an apparatus. But to the enduring wisdom of reality, the valuable human is an individual, an honest, self-reliant, self-thinking, working individual, productive of useful things, useful ideas, or useful service.

It has been demonstrated time and time again that the incentives, opportunities, disciplines, and necessities provided by a regime of law-protected private property have no rival in producing valuable humans, no enduring rival in paternalism, socialism, or any kind of absolutism. If we needed more proof of this fact than exists in our own history, especially modern proof, we would find it in the prodigious recovery of West Germany from the ruins of World War II and in the seemingly miraculous achievements of the free Chinese of Formosa in rising from a war-caused desolation.

We are long overdue in the general indignation certain to result when we recognize the buncombe of the political medicine man and the swindle of the political gangster in their preachments and innuendo that an intrinsic conflict exists between human rights and property rights.

Law, Scholars, and Kings

The concept of private property and the laws that have been designed to implement and safeguard it were born of an instinct that manifests itself even in some areas of animal life, presumably below the level of humans. The relationship in this respect is like that which exists between the instinct of self-preservation and the many

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laws designed to protect human life. These instincts are an expression of the wisdom and purpose of the intelligence behind all the phenomena of nature.

One of the most brilliant ornaments of man's efforts and achievements on our planet has been the considerable number of extraordinary minds who, as jurists and scholars of the law, helped to create the great legal systems wherein, among other achievements, the rights of private property in its numerous aspects were defined, classified, and protected. Not one of these pre-eminent legal scholars proposed the abolition of private property. The idea would have been anathema to them all.

Law in its inherent nature has profound depth and an affiliation with truth. It is not exclusive, but rather is universal, and it underlies and feeds the intuitive minds of the great who sincerely seek to know it. In medieval Germany a theory was prevalent among scholars of law that the whole body of the law had latent existence in the consciousness of the people.[2] Theoretically this concept is true if we think of law in its only justifiable function, and if we regard as temporary and counterfeit the misguided dictates of authoritarian holders of political power. And if this true concept were self-executing, if it had any means of enforcement, no people in the world today would be governed by communists, and none would be beguiled by those who would destroy the rights logically incident to the private ownership of property.

Yet a majority of the world's people today do live under totalitarian regimes wherein any rights of private property that may apparently or actually exist do so only precariously and without firm fixation in dependable law. This state of affairs is not modern, except only that it now exists. It is older than recorded history.

The earliest legal system which, in juristic thinking, can be recognized as a system, was that of Egypt, established about 6,000 years ago and surviving for about 4,000 years.[3] An underlying theory of this system was that every square yard of land and every person within the kingdom were the property of the king. The king was also the sole legislator. But overlying that foundational principle was a superstructure of private rights, including contractual rights and private ownership, conferred from above, with laws governing marriage contracts, deeds of lands and houses, leases, sales,

[2] Englemann, *History of Continental Civil Procedure*, p. 145.

[3] John Henry Wigmore, *A Panorama of the World's Legal Systems*, Vol. 1, pp. 11-41. This work is authority for other historic data stated in the essay.

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wills, and numerous other transactional instruments such as are familiar in an advanced society. To enforce these rights and the king's laws a judicial system existed. It embodied high ideals of judicial qualification and some enlightened principles of justice.

We should take thoughtful note of this Egyptian principle of universal ownership residing in the king, for in probably the most extraordinary atavistic regression in history, we are headed and have gone a long way in that direction — we, a people whose government was founded on the principle that certain inalienable rights, including the private ownership of property, were vested in each of us by our Creator. No one can be quite sure who today's king is, whether the people, the President, Congress, the Supreme Court, the political party in power, the monarchs of labor unions, the theorists of totalitarianism, or a verbalized society.

The Meaning of Ownership

At this point one example will suffice. But first we should ask ourselves what we mean, and what have constitutions and laws meant, by the term ownership. Certainly two essentials of the concept are dominion and exclusiveness — at least in some substantial measure. Without these factors the private ownership of property would be a delusion, its prime function being to place a mask of justice upon the collection of taxes.

Over 100 years ago, 100 years nearer the concepts of the Federal Constitution, a law dictionary quoted by the highest court of New York defined property as "the highest right a man can have to anything," as a term "used for that right which one hath in lands and tenements, goods and chattels, which in no way depends on another man's courtesy."[4]

Nearly 100 years ago, the California Legislature dictated this typical definition into its Civil Code (sec. 654):

> The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others.

That enactment was supplemented by another law (Civil Code, secs. 678. 669):

> The ownership of property is either absolute or qualified.
>
> The ownership of property is absolute when a single person has the absolute dominion over it, and may use it or dispose of it according to his pleasure, subject only to general laws.

[4] *Jacob's Law Dictionary*, quoted in *Stief* v. *Hart*, 1 N. Y. Reports, (Comstock), pp. 20, 24 (1847), New York Court of Appeals.

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Both of those laws are normal expressions of an enlightened jurisprudence and neither of them ever has been modified, repealed, declared unconstitutional, or directly adulterated.

Another typical pronouncement of an advanced sovereign is this edict of the California Constitution (Art. 1, Sec. 1):

> All men are by nature free and independent, and have certain inalienable rights, among which are those of . . . . acquiring, possessing, and protecting property . . . .

It never has been even hinted that this avouchment violates the Constitution of the United States.

In 1944 four of the ablest justices ever to serve on the Supreme Court of California joined in this official pronouncement:

> It is a principle of universal law that wherever the right to own property is recognized in a free government, practically all other rights become worthless if the government possesses an uncontrollable power over the property of the citizen.[5]

Government, as referred to in this lucid statement, of course, included the courts. The pronouncement never has been repudiated or adulterated.

[5] *House* v. *Los Angeles County Flood Control District*, 25 Cal. 2d 384; 153 P2d 950 (1944); Supreme Court of California. Opinion written by Justice Jesse W. Curtis, concurred in by Justices John W. Shenk, Phil S. Gibson, and B. Rey Schauer.

Brothers in Bond

Having thus reminded ourselves of the meaning of ownership, we can better appraise the example of regression previously mentioned.

A judicial decision momentous and epochal in United States history was that of the Supreme Court in the case of *Wickard, Secretary of Agriculture* v. *Filburn*, delivered in 1942 and reported in 317 United States Reports at page 111. The decision dealt with an Ohio farmer who maintained a herd of dairy cattle and raised poultry. His income was derived from selling milk, poultry, and eggs in the local market. It was his practice to grow a small acreage of winter wheat mainly to use on his own farm for feed, for homemade flour and seedings for the next crop. It would appear from the story that in some past year or years he had sold a portion of his small wheat crop not needed on his own farm; but no evidence existed that any of the crop in question was sold or intended to be sold or in any way to be placed on the wheat market.

Acting pursuant to the Agricultural Adjustment Act, the gov-

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ernment ordered that he plant only 11.1 acres in wheat, to produce 20.1 bushels an acre. He planted 23 acres in wheat, and from the forbidden use of 11.9 acres he harvested 239 bushels. For that crime he was fined 49 cents for each forbidden bushel, a total fine of $117.11. The penalty was upheld by the United States Supreme Court as being perfectly in harmony with the Constitution. With that decision came one of the most truthful and potential confessions ever made by government, the court saying (page 131 of 317, United States Reports): *"It is hardly lack of due process for the government to regulate that which it subsidizes."*

Summing up the juristic effect of that and other court decisions, an eminent encyclopedic legal work, *American Jurisprudence*, says:[6]

> There is authority for the rule that one taking the benefit of a farm aid statute, or anyone claiming under him with actual notice, is estopped to deny the validity of the statute, the applicability of its benefits to him, or the regularity of the procedure in granting him aid thereunder.

And so it has come to pass that the American farmer, although his deed purports to grant him fee title to his farm, actually is vested with no greater degree of ownership, and probably less, than was held by his Egyptian counterpart of 6,000 years ago. As it was with the ancient Egyptian, so it is with him: his "bundle of privileges" are in the superficial, not the basic, area of ownership. But lest sympathy be wasted, it should be noted that this American farmer compositely, although with individual exceptions, voluntarily and happily relinquished his ownership for profit.

On second thought, however, perhaps we should have both sympathy and concern for him because of the disappointments that have come to him and the danger of his position in the long pendulum swings of time. We are told that his debts have increased in the last five years from 27 to 41 billion dollars, some portion of which, no doubt, reflects capital investments; and that in the same period 3,200,000 farm families have renounced their farms and farming.

Timeless Lawgivers

Commencing with the ancient civilization of Mesopotamia, the land between the watersheds of the Tigris and the Euphrates rivers and centered in the city of Babylon, we can follow an intermittent chain of law-making which, in its intent to define,

[6] *American Jurisprudence* 2d, Vol. 3, pp. 773, 774.

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direct, and protect the rights of private property, denies to us of today any just sense of pride in our own juristic performances.

The legal system of Mesopotamia dates back about 6,000 years, and, about 4,000 years ago, reached an apex in the reign of King Hammurabi, whose code of laws still stands as a monument of intelligent, extraordinary achievement in law and the concepts of private property. In this land, commerce, banking, and judicial proceedings were highly developed, and laws existed that recognized in detail, guided, and protected private contractual and property rights, relating to deeds, leases, loans, promissory notes, sales, bank deposits, bills of lading, agency, partnership, and the many transactional instruments and private rights involved in an active, communicating, competitive society.

The most concise and most famous law recognizing, and designed to protect, the rights of private property was delivered about 3,000 years ago. It was one of the Ten Commandments, a foundation stone in Hebrew history and Hebrew law:

> Thou shalt not steal.

But knowing that laws do not enforce themselves, that if they are to have life and impetus, they must abide in the conscience of the people, the author of the Decalogue, whether prophet or God, supplemented that terse commandment with another:

> Thou shalt not covet thy neighbor's house, thou shalt not covet thy neighbor's wife, nor his manservant, nor his maidservant, nor his ox, nor his ass, nor any thing that is thy neighbor's.

And when the enlightened and powerful teacher from Nazareth delivered his message to the people of his land, he clearly sanctioned those laws in these words:

> Think not that I am come to destroy the law, or the prophets: I am not come to destroy, but to fulfill. For verily I say unto you, Till heaven and earth pass, one jot or one tittle shall in no wise pass from the law, till all be fulfilled. (Matthew 5:17,18)

In addition to the plain, specific statements of that utterance, it carries two implied truths, without the knowledge of which there can be no wisdom in the business of law. One has been stated: that laws do not enforce themselves. The second is that government always is of men, never of law. Astonishing as the fact may be to us, this truth was an articulated principle of Chinese law in regimes that began 4,500 years or more ago and continued in similar legal framework for more than 4,000

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years, always recognizing the rights of private ownership, and providing rules, methods, and moral principles for contractual transactions.

The Classical Respect for Private Ownership

Among the many contributions of the Greeks to our culture were patterns of legislation in which were clear, precise recognition of private property rights, provisions for their protection, laws governing inheritance and defining the methods of numerous transactional instruments and the rights involved. The most noted of the lawmakers was Solon, Athenian statesman who lived about 600 years before Christ. One of his laws concerning theft reflects the conscience of the age and place in relation to the rights of ownership. It provided that if the owner of a stolen article recovered it, the thief was condemned to pay twice its value; if the article was not recovered by the owner, the thief's penalty was to pay tenfold the value and, if the jury so determined, to be confined in the stocks for five days.

Over a thousand years later, the achievements of the Greeks in defining and protecting private property and contractual rights were equalled, if not surpassed, by Mohammedans, whose creed and legal system, within about a hundred years after the Arabian prophet's death, had spread across an area from India to Spain. The law of this Islamic empire was derived from the Koran, the words and conduct of Mohammed, and the writings of jurists who belonged to the faith. One of the reported sayings of Mohammed was this:

> I swear by God that if Fatima my daughter were to be found guilty of theft, then I would have her hands cut off.

Before turning our attention to the greatest lawmakers of all, the Romans, let us skip ahead in time to have a look at one of the strangest dichotomous characters of history, the Mongolian conqueror, Tamerlane, known also as Timour. By about the beginning of the fifteenth century, he had become the ruler of much of Asia, India, and all Asia Minor. As cruel and murderous in war as communists are in pursuit of their aims, he was an able and even a kindly ruler in peace, doing much to promote art, science, and intelligent law in his dominions. Of him the noted English historian, Edward Gibbon, wrote:

> Timour might boast that, at his accession to the throne, Asia was the prey of anarchy and rapine; whilst

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under his prosperous monarchy, a child, fearless and unhurt, might carry a purse of gold from east to the west.

Such an experience would be a supreme test today of law in its protection not only of private property, but of children.

The Everlasting Contribution of Rome

The story of Rome is known at least in a general and fuzzy way to every well-educated person. But few appreciate the magnitude and penetration into many lands of the Roman contribution to jurisprudence, which, among other accomplishments, defined, guided, and protected private rights in property and contracts in the various activities and transactions of an energetic people.

Let it suffice here to mention only a few of the Roman jurists whose names never will be forgotten by genuine sages of the law.

Gaius wrote his treatise, *The Institutes,* in the second century, A.D. The work was then original in its method of classification and generalization whereby he constructed a comprehensive system of juristic principles. It was used as a textbook for students of law in a number of countries for three centuries after the author's death, about 200 A.D. This is an example of his style and concepts:

> Things subject to human dominion are either public or private.
>
> Things public belong to no individual, but to a society or corporation; things private are subject to individual dominion.

It was Ulpian, the Counselor, who at about the beginning of the third century wrote 23 treatises on law and gave us a definition of justice which never has been improved:

> Justice is the constant and perpetual will to allot every man his due.

Justinian I, at Byzantium, Emperor of the Eastern Roman Empire, in the sixth century undertook direction of the task of organizing and greatly reducing in wordage the Roman law, employing a commission of seventeen jurists headed by one said to be the most learned man of his time, Tribonian. Three works were produced, the *Digest,* the *Code,* and the *Institutes,* of which the *Digest* was the most famous and the most influential through many different eras and cultures. Although with the fall of the Roman Empire, the *Digest* disappeared for five centuries, one complete and reliable copy then was found, and it has influenced the jurisprudence of many lands and centuries. These words from the first chapter of the *Digest* have been translated into various languages:

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Three things the law enjoins upon all: to live honestly; to cause no vexation or harm to another; and to render to every one his due.

No more just, practical, and expedient principles to govern the private ownership of property ever have been conceived.

The Trail of One Great Work of Law

We can follow the development of modern law in Western Europe and the British Isles, before the blackouts by totalitarian despots, by following the trail of Justinian's *Digest*, one of the best-selling books for some years after the art of printing was mastered. This is so not because the *Digest* was the sole influence and pattern, but because it was amalgamated with local customs and systems, always recognizing, defining, and protecting rights of private contracts and property.

Disregarding the chronology, the trail would lead us to France and the *Code* of Napoleon, a work that has been translated into almost every language and has influenced the world. Concerning it, Napoleon, in exile at St. Helena, said:

> My glory is not to have won forty battles; for Waterloo's defeat will destroy the memory of many victories. But what nothing will destroy, what will live eternally, is my *Civil Code*.

The trail, with legal scholars from Italy often leading or following, would take us to Austria, Bohemia, Serbia, Germany, Poland, and the British Isles, and finally to America and all the English settlements insofar as Justinian's *Digest* played a role in the design of the English Common Law, mainly through the studies and writings of such prodigious scholars of law as Bracton, Chief Justice Littleton, Coke, Bacon, Selden, Mansfield, and Blackstone.

Modern Destroyers of Private Property

It would seem that one of the most difficult or unattractive or disagreeable things for human beings to do, even in the presence of history's judgments, is to heed the advice of the Apostle Paul: "Prove all things; hold fast to that which is good."

Among the destroyers of private property and the privileges of private ownership, two of the wreckers do not here call for our concern. They are (1) acts of fortuity and (2) negligence. Although either can be disastrous to the individual, in their general consequences they are of minor significance compared with two others. Our brilliant, comprehensive programs of insurance, privately conceived and executed, and our personal accomplishments in mechanics, engineering, and all realms of

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science, have been alert to and diligently encountering these minor destroyers.

But two others, crime and government, of which the latter is the more dangerous, do demand our thought and vigilance, lest private ownership of property becomes only a nominal superficiality while continuing to carry the responsibility for management and care, and the burden of financing the government.

It is reasonable to conclude that a relation exists between the increase in crime, now a menace to every person, and the government's increasing attacks upon and subversion of private rights in property. When government does not respect, and ceases to have concern for, those rights, the atmosphere thus created is in accord with and supports the criminal's philosophy.

The reported fact that in one year's time 10,000 trays, 2,000 salt and pepper shakers, and nearly 1,200 sugar dispensers disappeared from the Pentagon's cafeterias and snack bars, is, no doubt, a minor indication of an atmosphere created by government not fearfully charged with integrity and discipline.

It does not seem possible to arrive at an accurate estimate of the total property losses suffered by our people resulting from crime: from robbery, burglary, embezzlement, fraud, confidence-trickery, vandalism, malicious mischief, arson, and theft of all kinds and dimensions: from a woman's purse and a store's merchandise to costly jewelry, furs, money, bank robberies, trade secrets, drug cultures, secret formulas, and lifetime savings.

An estimate probably well supported by facts is that crimes against the ownership of property have been increasing at a rate four times as great as the rate of population increase. But crime takes vastly more from the citizenry than the immediate losses. Money needed for law enforcement, investigation, courts, court proceedings, institutions of confinement, punishment, and treatment is derived from private property.

The Alert Citizen's Three Questions

But the potentials of private crime for separating property from its owners and for destroying property and the privileges of ownership are piddling compared with the potentials of government for like effects. An alert citizenry will ask these questions of its public officials:

1. Is there a point beyond which, when public officials take your money through the entrusted power of taxation and hand it over to

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others without consideration, without justice, and without intelligent mercy, they violate the eighth commandment: "Thou shalt not steal"?

The answer to that question, of course, is "yes," unless through miseducation, suppression of news and guileful propaganda, or just being dull, we have retrogressed to the ancient belief that the king can do no wrong.

2. Is there a point beyond which public officials cannot go in causing inflation through their fiscal, money, paternal, and foreign policies, their extravagances, subsidies, gifts, and favoritisms, thus destroying substantial value in everyone's money and in the lifetime savings of industrious, thrifty, and exemplary citizens, without committing theft and without violating the elemental commandment of justice: "Thou shalt render to every person his due"?

3. What are the authoritative decisions of our government officials – legislative, judicial, and executive – doing to the once recognized rights of private ownership, and on what fateful course are we bent? ◈

THE PRESS and THE PEOPLE'S RIGHT TO KNOW

JOHN C. MERRILL

THE IDEA is prevalent today, at least among journalists, that the people of the United States have a *right* to know government business. Although there are various segments of our society, including many in the government apparatus, which seemingly do not endorse this "people's right to know," it has been generally accepted as a basic concept in our democratic Republic. If the people *rule* through their representatives, then it naturally follows that if they are to be well-informed, intelligent rulers, they must know what their government is doing. In this sense, "the people's right to know" is on solid theoretical ground.

What is rather disturbing about

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the whole matter of the "people's right to know" is the idea that the government apparatus is solely – or largely – responsible for restricting this *right*. There is no doubt, of course, that government is secretive, is over-sensitive, and is restrictive of information. It is also clear that government "manages" the news, making sure certain releases are made at the right time to achieve a desired effect and de-emphasizing (or eliminating) certain other information about which it is not enthusiastic. Everyone who can read in this country should know about this government secrecy, sensitivity, and management. The mass media of communication, with a certain sensitivity of their own, periodically draw the public's attention to it.

The concept of "the people's right to know" has mainly been promoted since World War II; books such as Kent Cooper's *The Right to Know* and Harold Cross' *The People's Right to Know* and numerous articles have been printed declaring such a "right" and castigating government for infringing on it. No libertarian can but admire and applaud such anti-government broadsides, but the problem is much larger than this. And it cries out for a solution which is not so simplistic as blaming the government – or even "reforming" it.

Do People Care?

Two other important factors are involved in this business of letting the people know: the *people*, and the *press*. How often they are overlooked in a discussion of this area!

Quite frankly, the people either don't know they have such a right, or they don't take it seriously. It appears that they simply don't care. Such a right to know is certainly one of great importance – a civil right if there ever was one. But where is public concern? Where are the "demonstrations," the letters to congressmen – even the letters to newspapers and magazines? Why has not the Supreme Court, under popular pressure, dealt with this infringement of a civil right? Why, indeed, do not the citizens (the *people* who have this theoretical right) *insist* upon it?

The only segment of our society which seems really concerned about the *right* is the press – the editors and publishers chiefly. They criticize, agitate, and fret about the "people's right to know" being infringed on by government. In effect, they imply that government alone keeps the people from "knowing" government business. But this is not really true. What about the news media themselves? What are they doing in this respect? Any person familiar with the typical news operation must recognize

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that only a very small portion of government-related information gets to the average citizen's eye or ear. So in effect, the news media are guilty themselves of the same sins of omission and commission they point to in government.

The editors select and reject government information. They leave out this story, that picture, this viewpoint. They play up this speech, trim that one and put it on page 44, leave that one out completely. In effect, they act as *censors* – perhaps with the best of motives – but censors nevertheless. They "manage" the news, also, just as government officials do. They play their parts, too, in the restriction of the people's right to know. Of course, they would not put it so bluntly, preferring to call it "exercising their editorial prerogative." *They* are "editing"; the *government* people are "managing" and "restricting."

Much News Is Wasted

While the editors and publishers are bemoaning the fact that they cannot get enough news from government, their underlings (or they themselves) are filling wastebaskets in the newsrooms with government news of all types. For years I have been trying to get one of my graduate students to do a content analysis of the newsroom wastebaskets instead of the newspaper's pages. Such a study should be illuminating, and I am sure would show that the newspapers *do have* abundant information about government, but which is not being printed. Admittedly, much of this material is not "newsworthy" (and this is as subjective as what a government man might label "classified") and should not be used, but the fact remains that it is not being given to the people who have a right to know it. (Loud cries of "space limitations!" at this point.) In spite of various rationalizations, it does appear that if the press is seriously concerned about the right of the people to know about government, it will increasingly point its finger at itself. And instead of complaining in a multitude of books and articles about the news that is not forthcoming from government, it might be well for the press leaders to concentrate on giving their readers a larger and more realistic sample of the news which has been obtained from government.

One who observes the editing operations of a newspaper is struck by the swiftness with which government news is discarded and selected. And, when the wastebaskets fill with the information which the people should be reading, it will be noted that there are few tears and practically

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no gnashing of teeth. It is as if these practitioners of journalism dissipate the communication output relative to government without even realizing that they, like the government officials they often criticize, are "managing the news" and keeping back information which, in their own words, "the public has a right to know."

Room for Improvement

To avoid being misunderstood here, let me emphasize that the government is far from guiltless in this matter, and its villainry is undoubtedly more sinister than its critics believe. But it has its day in court; if its sins are legion, its accusers are certainly as numerous. The press, however, the main critic of government, usually throws rocks with impunity from its sanctified glass house. My contention is, I suppose, that the press should stop throwing so many rocks at government and start throwing more government information at the public.

Although the government is guilty in this area, so is the press. It is time for the press to recognize that it is as much obligated *to get* government information for the people and *to print it* when it's gotten as the government would be obligated to *give it out*. Perhaps if some press critics of government recognize that they indulge in the same practices they condemn in government, they will change their ways – or will at least revamp their one-sided and unrealistic definition of "the people's right to know." ◈

IDEAS ON LIBERTY

Reward or Punishment

(A LESSON IN RELATIVITY)

IN A SOCIETY where the highest reward for good citizenship is to be government care from cradle to grave, should not the penalty for bad citizenship require the criminal to stand on his two feet and assume responsibility for his own welfare as a free man?

PAUL L. FISHER
Redondo Beach, California

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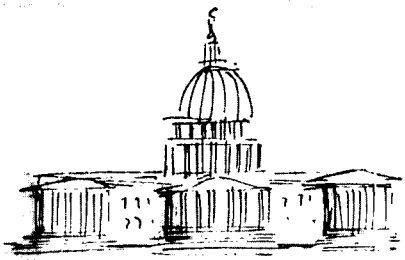

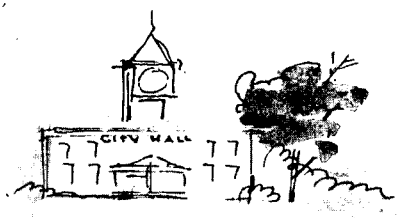

AMERICAN FEDERALISM: EROSION

GEORGE CHARLES ROCHE III

ALBERT J. NOCK once commented, "There must be as many different kinds of democracy in this country as there are of Baptists. Every time one of our first-string publicists opens his mouth a 'democracy' falls out; and every time he shuts it, he bites one in two that was trying to get out." One of the difficulties that has arisen to aid and abet the erosion of our American tradition of federalism is this very problem concerning the definition of democracy. Since we are all "the people," it is not surprising that we all think that the "rule of the people" is a good idea. But when we come to discussing what we mean by the "rule of the people," we find it a little harder to agree.

This is a problem of definition deeply rooted in the American political past. Thomas Paine stated one side of the case quite simply in *The Rights of Man* when he said, "That which a whole nation chooses to do, it has a right to do." John Quincy Adams answered this attitude drawn from the French Revolution when he replied to Paine in a series of articles published in a Boston newspaper in the summer of 1791. Defending the American tradition of federalism and limited government as it had developed, Adams warned in his *Letters of Publicola*: "This principle, that a whole nation has a right to do whatever it pleases, cannot in any sense whatever be

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admitted as true. The eternal and immutable laws of justice and morality are paramount to all human legislation. The violation of those laws is certainly within the power, but it is not among the rights of nations. The power of a nation is the collected power of all the individuals which compose it. . . . If, therefore, a majority . . . are bound by no law, human or divine, and have no other rule but their sovereign will and pleasure to direct them, what possible security could any citizen of a nation have for the protection of his unalienable rights? The principles of liberty must still be the sport of arbitrary power, and the hideous form of despotism must lay aside the diadem and the scepter only to assume the party-colored garments of democracy."

As Edmund Opitz put it several years ago in THE FREEMAN, the problem of political power is contained in the answer to not one question, but two. What shall be the government's scope? And who shall rule?[1] We have long since decided in this country that the answer to the second question is that the majority of the people shall rule. But this still doesn't answer the first question as to what the scope of that authority should be. The confusion in categories between these two separate questions has served to obscure the fact that the exercise of excessive power is objectionable not only when perpetrated by a king-directed government, but also when perpetrated by a people-directed government. Despotism becomes despotism because of the nature of the act rather than the nature of the actor.

Equal in Slavery

One of the early analysts of the American experiment in self-government, who saw much to approve in the system as it unfolded, warned Americans that a majority could be even more tyrannical than the most absolute of European monarchs. Tocqueville speculated that if Americans ever confused equality of opportunity with equality of condition and then used their new found political power to enforce equality of condition, the tyranny of the majority would indeed become a reality. He warned, "Americans are so enamoured of equality they would rather be equal in slavery than unequal in freedom." Tocqueville had in mind the unchecked "general will" view of democracy espoused by Rousseau and implemented in the French Revolution. The modern totalitarian states have carried this tendency to its ultimate con-

[1] The Rev. Edmund A. Opitz, "The American System and Majority Rule," THE FREEMAN, November 1962, pp. 28-39.

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clusion by exercising their despotism in the name of "the people" and clothing their institutions in the fullest democratic trappings; for example, "democratic centralism" in the Soviet Union, presumably democratic since it is done in the name of the people, and central in the sense that the government tells the people what to do. In the words of C. S. Lewis' Screwtape, "'Democracy' is the word with which you must lead them by the nose." Screwtape goes on to suggest that mankind must never be allowed to ask Aristotle's question: "Is 'democratic behavior' behavior democracies like, or behavior that will preserve a democracy?" Screwtape suggests that the final triumph over man will come when the meaning of democracy has been perverted to mean "I'm as good as you."[2]

If "I'm as good as you" is to be enforced as a principle of political authority, then, indeed, right and wrong are what the majority says they are. In the words of Edmund Opitz, "the antithesis of *majority rule* is not *minority rule* but liberty." Liberty presupposes an individual self-rule based upon the assumption of human dignity derived from man's identity as a creature of God. It is when this principle of human dignity is violated that democracy merges into socialism. What need is there of God or heaven or individual self-rule if the government is to be omnipotent and to provide a heaven on earth? Socialism as Hegel defined it is quite literally "the kingdom of God without a kingdom and without a God."

Totalitarian Controls "for the Good of the People"

Once the basic error is made that anything is all right so long as the people want it, it is a small step to believing that anything is desirable so long as it's "good for the people." "Of the people" very quickly becomes "for the people" whether they like it or not. The twentieth century has seen the development of the completely totalitarian state that justifies any barbarism in the name of the ultimate good of the people. But it has also seen the development of the same idea in the mainstream of Western civilization where we have prided ourselves on being, so we thought, most completely nontotalitarian.

Robert Michels, Graham Wallas, and Walter Lippmann, all products of the enlightened twentieth century and all eager to announce how antitotalitarian they are, have also emphasized what they call the "irrationalism" of democracy, ex-

[2] C. S. Lewis, *The Screwtape Letters* (New York: Macmillan Co., 1962), pp. 161-62.

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pressing a preference for an elite corps to run things in the name of the people. It need scarcely be pointed out that such a view of democracy is anything but the rule of the people, that on the contrary the wisdom of the people and their self-rule consists in making decisions on a level close enough to them to retain perspective, firsthand knowledge, and control of their own affairs. As we have seen, it is precisely the diffusion of decision-making power inherent in the tradition of American federalism that has most nearly achieved a genuine rule of the people.

Here again, Tocqueville early saw the nature of the problem and warned that "democratic socialism" was a contradiction in terms. Democracy is an essentially individualistic institution and therefore in irreconcilable conflict with socialism: "Democracy extends the sphere of individual freedom; socialism restricts it. Democracy attaches all possible value to each man; socialism makes each man a mere agent, a mere number. Democracy and socialism have nothing in common but one word: equality. But notice the difference: while democracy seeks equality in liberty, socialism seeks equality in restraint and servitude."[3]

[3] *Complete Works of Alexis de Tocqueville* (1866), IX, 546.

The State Absorbs Society

If the distinction may be made between the state and a society, that society is a composite of the actions and institutions of individuals in areas where the state is not concerned, then it may be said that it is the vice of the Rousseau, French Revolution, "general will" approach to democracy that ultimately the state absorbs society. At the same time, it is the virtue of the American tradition of federalism that it erects barriers to prevent that absorption.

The absorption of society by the state may be measured within our own Republic in the history of the centralization of power that has occurred. The late eighteenth and early nineteenth centuries were a consistent demonstration of the strong determination of the American people and its leadership to avoid undue centralization of political authority. Whatever political infighting occurred during the presidencies of Washington, Adams, Jefferson, Madison, Monroe, and John Quincy Adams, a common agreement on this point was tacitly observed. Some historians have suggested that a break in this continuity came in the age of Jacksonian democracy. But in actuality, the Jacksonian, middle-class entrepreneurs were interested not in the limitation but rather in the extension of social

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mobility and economic opportunity. They resented monopoly power wherever it might appear, but especially in government.

Sacrificing Principles

Yet between North and South, an issue was building that some men foresaw as a danger to this American concept of limited and diffused power. Long before the Civil War, John Randolph warned: "The people of this country, if ever they lose their liberties, will do it by sacrificing some great principle of government to temporary passion. There are certain great principles, which if they be not held inviolate, at all seasons, our liberty is gone. If we give them up, it is perfectly immaterial what is the character of our sovereign; whether he be King or President, elective or hereditary, – it is perfectly immaterial what is his character – we shall be slaves – it is not an elective government which will preserve us."[4]

Randolph spent his life insisting that power must be limited, and that the surrender of power to a centralized administration was all too often a one-way street. As he once commented, "Asking one of the states to surrender part of her sovereignty is like asking a lady to surrender part of her chastity."

[4] *Annals of Congress*, 12th Congress, 2nd Session, pp. 184-85.

Northern opponents of the institution of slavery, such as John Quincy Adams, also recognized that even such a moral evil as slavery must be allowed to die from its own economic weaknesses rather than be killed with a weapon forged by a great centralization of national power.

But with the passing of the older generation, a new breed, the direct ancestor of the modern social reformer, appeared on the scene. Such abolitionists as Senator Sumner, Wendell Phillips, and William Lloyd Garrison were so assured of their own moral rectitude and their capacity for running the affairs of all mankind, that they were willing to gather and exercise any amount of power to pursue their goal. Perhaps it is such men that Ambrose Bierce had in mind in *The Devil's Dictionary* when he defined a conservative as "a statesman who is enamoured of existing evils, as distinguished from the liberal who wishes to replace them with others."

Even the coming of the Civil War demonstrated a basic acceptance of the American federal tradition on the part of most Americans, both North and South. Yet, there can be little doubt that some "progress" was being made toward the kind of centralization that could ultimately prove harmful to

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the American federal tradition. Some advocates of states' rights have a valid point when they suggest that the passage of the Fourteenth Amendment opened the door to changes in our federal system.

Yet the greatest impact upon the American tradition of federalism that occurred in post-Civil War nineteenth century America probably sprung from the one-party domination that was in effect almost without interruption until the twentieth century. Nationally, the Civil War had produced a monopoly situation for the Republican party. In the repressed and resentful South, local politics came to be a monopoly of the Democratic party. Even some places in the North (for example, Boss Tweed's New York City) came also to be Democratic backwaters due, in large part, to the reaction against the monopoly situation of the Republican party in national politics. The age of machine politics thus stemmed from an undue centralization of political control.

Monopoly in Political Power

One-party domination of American political life, of course, robbed the Republic of that flexibility and variety that had traditionally been its strength, producing in effect the very sort of monopoly situation in political power that our tradition tries so hard to avoid. A time of tremendous building in industry, communication, and transportation across our rich American continent followed the war. Yet something else came with this building. The story of the spoilsmen in politics and the exploiters in economic life working hand in glove to take the American people for a ride is so well known as to be a commonplace.

Advocates of centralized authority and economic control in the twentieth century look back to the so-called era of Reconstruction and Big Business to point out its evils with great glee and to suggest that those evils are a *prima facie* case for the necessity of more political control of business. The very reverse is actually the case. It was a monopoly of political power, and an exercise of that power by one element of society, that did the damage.

A half-century of abuses stemmed from this monopoly situation. Boss Tweed and Jim Fiske were all too symbolic of their era. The people began to grow restless in the face of a repressed South and an all-too-often exploited North and West. A generation of reformers began to grow up who misread the problem as one of too little political power rather than one of too much political power.

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The late nineteenth century saw the rise of more and more political protest in the Granger Movement, the Farmers' Alliances, and the Populist Party. The candidacy of William Jennings Bryan in 1896 caught up this protest in a single great crusade composed of all sorts of dissident elements. Even then, most Americans held back from espousing the centralization of political power to achieve social reform. Middle-class America had one of its great strengths in its common sense and remained more than a bit suspicious of the "boy orator of the Platte."

The Progressive Backlash

As we moved into our present century, however, yet a further change in American attitude was about to occur. As a plutocracy grew ever fatter in its monopoly control of political power, it came to dominate more and more of the American social structure as well. This always happens as power is centralized and the state begins to swallow society. But the old traditional leaders of American society, the middle-class businessman, professional man, and clergyman, were increasingly unwilling to allow this to happen. They decided to fight back. Thus, the Progressive movement came into being. The underlying rationale of this middle-class protest movement was an attempt to break up a monopoly of power and to reinstitute the American tradition of diversity, social mobility, and economic opportunity. The goals were traditional, the means to achieve the goals were not. Political power was to be taken from the plutocracy *by giving it to the middle class*. The Progressives were hoping to break up a power monopoly by creating a power monopoly.

This dichotomy explains the peculiarly Janus-like quality of the Progressive movement. Within both Theodore Roosevelt's New Nationalism and Woodrow Wilson's New Freedom we find the conflicting demand for greatly increased and centralized political power as the means by which a decentralized, traditional, individualistic system might be reinstated and preserved. The tragedy of Progressivism is that these well-intended people were to learn that such ends cannot be achieved through such means. As the state grows bigger, the individual must grow smaller.

No more graphic demonstration of this could be made than the example of the legislation of the Progressive era itself. Woodrow Wilson epitomized the Progressive dilemma in a speech to the New York Press Club during the presidential campaign of 1912: "When we resist the concentration of

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power, we are resisting the powers of death, for concentrated power is what always precedes the destruction of human liberties." A fine sentiment and a correct observation, but Wilson and the other Progressives were doomed to failure because their weapon against the concentration of power was the concentration of power.

A Bias Among Historians

Once launched upon the centralizing road during the Progressive era, America has seemed unable to reverse the process. The crisis of the First World War, the futility of attempting to dictate morality to a nation with the new commandment, "Thou shalt not drink," the crisis of depression and the aftermath of economic distress, the great new burst of centralization and social planning of the 1930's, the renewed crisis of the Second World War, and the Cold War of the past twenty years — all form part of a continuing pattern of centralized political authority.

This tendency has been aided and abetted by a new philosophy of government running in a contrary direction to traditional American political life. The Progressive era saw the rise of a group of academic figures and social thinkers of all disciplines who attempted to re-examine the American past in terms of this new bias favorable to centralization. Our colonial history and constitutional era have been re-examined by such historians as J. Allen Smith and Charles Beard and one of their most outspoken current disciples, Merrill Jensen, to reach the extremely present-minded conclusion that the Founding Fathers were a group of economic bandits on the make who suppressed the strivings of the common man. The remainder of American history is similarly utilized to make Jefferson, Jackson, and a number of others well within the scope of the American federal tradition appear as political centralizers and economic protectors of "the people" in a view of history that reverses historical continuity, begins with the New Deal, and reaches backward in time to prove that it was ever thus and so. As Forrest MacDonald, Robert Brown, Bray Hammond, and any number of other competent historical authorities have made clear, such was not the case.

Crusade for Centralization

This fact has not deterred the continuing development of the rationale for further centralization of political power. The intellectual journey from the milder collectivism of the Progressive era to the steadily increasing collectiv-

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ism of our own time is clearly evident in the evolution of a number of thinkers. Walter Lippmann serves as a good case in point. In 1913, Lippmann's *A Preface to Politics* referred to the state as "the supreme instrument of civilization." By the time of the early New Deal, Lippmann had come to believe that the state must keep people "economically secure" to preserve democracy. Lippmann's prose is filled with sympathetic references to the people and to tradition. However, the earlier Progressive Lippmann's assumption that the exercise of state power was justified through popular participation in government had given way by the mid-50's, as for example in *The Public Philosophy*, to the belief that the people could not do the job and had to be limited to a franchise that gave all power to a chief executive and only retained an after-the-fact right to approve or disapprove the executive performance.

The list of those urging such a centralization of authority and responsibility is a long one, and the progress of the idea has been rapid. Yet, occasionally, the American people have resisted this usurpation of their authority, as for example in Franklin D. Roosevelt's resounding defeat in the 1937 "Court packing" scheme. The people, with Congress as their representative, made quite clear their belief in the principle of constitutionally limited and dispersed powers. The nature of this successful revolt against Roosevelt seems all the more important when we recall that it followed on the heels of a great victory in the 1936 elections that had demonstrated not only his personal popularity but that had given him a large majority in both houses of Congress. The report made at the time by the Senate Judiciary Committee remains a ringing affirmation of the American principle of freedom under law.

Where It Leads

Such temporary revolts against centralization should not disguise how steadily the concept has developed. Any number of horrible examples of the fruits of this tendency come readily to mind in the history of NRA or AAA. The Constitutional violations producing the power centralization that occurred during the 1930's were noted by the Supreme Court in both NRA and AAA. The impact of this centralization upon individual freedom is equally apparent. Tailors arrested, indicted, convicted, and sentenced because their price for pressing a pair of pants was a nickel below the NRA blanket code; farmers fined for planting wheat that was consumed

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entirely on their own farm; such examples make abundantly clear the sort of thing that happened to the American tradition of federalism.

In 1905, George Santayana viewed the tide of "centralization and reform" then just beginning to rise in this country and warned, "A reformer hewing so near to the tree's root never knows how much he might be felling." He predicted the course of subsequent events with great accuracy. In Russell Kirk's summary of the Santayana position, the future is outlined with awful clarity:

> Liberalism, once professing to advocate liberty, now is a movement for control over property, trade, work, amusements, education, and religion; only the marriage bond is relaxed by modern liberals. "The philanthropists are now preparing an absolute subjection of the individual in soul and body, to the instincts of the majority – the most cruel and unprogressive of masters. . . ."[5]

Congressional Attrition

The traditional balance of power within the federal government has placed Congress in a role of great authority, well capable of limiting executive centralization. American history is filled with examples of that limiting role, a role well suited to Congress since its composition and method of election makes it the natural and direct representative of the wide diversity present within the American federal system. The same period of recent American history which has seen the decline of the American tradition of federalism has therefore naturally witnessed a steady decline in the importance of Congress and a widespread Presidential and bureaucratic usurpation of congressional prerogatives. Control of the purse and the ability to make war are perhaps the most outstanding keys to power and thus to sovereignty that the Founding Fathers centered primarily in Congress. The growth of the Presidential office as the tribune of the people and a steadily burgeoning bureaucracy have come increasingly to subvert that original intention. Alleged "need of reform" and the crises of war and depression have provided the excuse.

If such a key representative of the American tradition of federalism as Congress has suffered such a steady attrition, the concept of states' rights has fared little better. According to the well-known authors of a widely used American history survey, "states' rights are now an historical exhibit, maintained by the Republi-

[5] Russell Kirk, *The Conservative Mind* (Chicago: Henry Regnery Co., 1960), pp. 508-509.

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can party." Things may not be all that bad, but the role of central government as the sole arbiter of men's fortunes does seem to have fewer and fewer obstacles in its path.

The "Four Freedoms"

It is said that a Scottish nationalist who refused to support the English war effort during the Second World War was incarcerated for the duration. When released, he was asked how he had fared during his jail term. He replied, "Well, I had the four freedoms." As you recall, the first two of those four freedoms, which Roosevelt envisioned for the entire world were freedom of speech and freedom of worship. Both these items are specific guarantees written into our own Constitution. Yet the Second World War changed the nature of these guarantees. The Constitution treated these rights as derived from a superior power and thus not to be violated by any agency, government included.

By the time of the Second World War, such rights had apparently become a grant to the people from a beneficent government. What of the other two "freedoms"? Freedom from want and freedom from fear, of course, are not natural rights at all; and, until our own materialistic, reformist, supercentralizing age that somehow expects government to take over all facets of life, they would never have been regarded as any of the government's business at any previous point throughout our long heritage and exercise of American liberty. In any event, the Scottish nationalist was right. He did have the four freedoms available to him in jail. So might we all.

The Consequences

Meanwhile, how do such guarantees of governmental largess work out in action? One of the most deeply entrenched items in the new centralization of all authority and responsibility in Washington is the Social Security system. In our own enlightened times of the mid-twentieth century, this nation saw fit to penalize a group of peaceful and frugal Amish farmers, who were forbidden by their religion to participate in such a system, and who therefore had not paid the appropriate social security taxes. The government seized the livestock of these simple people for sale at public auction.

Felix Morley quotes a news item pertaining to this event in the new American view of liberty:

> As the sale began, a young Oberlin College student turned up wearing on his back a crudely hand-lettered sign

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that read, "If government can take these horses today, it can take yours tomorrow – Don't bid!"

He had hardly walked a dozen steps before two burly sheriff's deputies grabbed him and hustled him off to their car. The gestapo couldn't have done it more efficiently. The sale went on.[6]

Surely in our system of divided powers the courts would provide relief from such arbitrary exercise of power, a student of American government might conclude if he were familiar with the American tradition of federalism. That is, he would hold some such idealistic hope until he began to read the discussions of what might be called the judicial "relativity" so common in our age. We now find that even the courts frequently boast of reaching their decisions on the basis of "sociological" evidence, without being "hampered" by legal precedent or traditional interpretations of the Constitution. It would be difficult to imagine an attitude more directly corrosive of the American constitutional tradition of liberty under law than such a view of judicial processes.

Local Governments Diminished

This tremendous interference in the affairs of individuals and localities is both cause and effect of another phenomenon of our time, the frequent failure of state and local governments to do their job properly. Federal interference, of course, is itself a great cause of such a collapse of state and local ability and responsibility. But many of the various localities and subunits of the nation are not without blame.

Whether a local irresponsibility or a national usurpation occurs first is not the point. What is important is that the people composing the membership of the state and local governments and private institutions that must provide the vitality of the American federalist tradition have both the desire and the courage to reassert their liberties and the responsibilities that accompany them. As power has drained from the private sector into the public sector, from the nation at large into Washington, and from Congress into the Presidency, private rights have proven increasingly difficult to maintain. We are told that such a trend is productive of "efficiency" or "modernization," but it might pay to remember that the most notable examples of a thoroughgoing political centralization that the twentieth century offers are the totalitarian experiments in which "efficiency" and "modernization" in the suppression of

[6] Felix Morley, *Freedom and Federalism* (Chicago: Henry Regnery Co., 1959), p. 151.

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all human liberty have been the primary results.

The "Service State"

Dean Roscoe Pound of the Harvard Law School coined the phrase "Service State" to describe the assumption of all political and economic functions by centralized government. In such a "Service State" a subtle change has occurred in the meaning of the word freedom. As Professor Hayek phrases it: "To the great apostles of political freedom the word had meant freedom from coercion, freedom from the arbitrary power of other men, release from the ties which left the individual no choice but obedience to the orders of a superior to whom he was attached. The new freedom promised, however, was to be freedom from necessity, release from the compulsion of the circumstances which inevitably limit the range of choice of all of us. . . ."[7]

If this definition of the Service State seems hard, let a new-styled "Liberal" of impeccable credentials state the case for us. Senator Joseph Clark of Pennsylvania puts it plainly: "To lay a ghost at the outset and dismiss semantics, a Liberal is here defined as one who believes in utilizing the full force of government for the advancement of social, political, and economic justice at the municipal, state, national, and international level."[8] No wonder the federal system seems so limited in its objectives and its means to people with such ambitions!

A member of the Atlee cabinet in the socialist government of England a few years ago, Mr. P. C. Gordon Walker, published a book entitled, *Restatement of Liberty*. It epitomizes much of the present thinking that has received wide acceptance on both sides of the Atlantic: "The new State will also directly augment authority and social pressure by new powers of punishment and compulsion. So far from withering away, as in theory both the individualist and the total State should, the new State, if it is to bring into being and serve a better society, must create new offenses and punish them." A restatement of liberty, indeed! ◈

[7] Frederick Hayek, *The Road to Serfdom* (Chicago: University of Chicago Press, 1944), pp. 25-26.

[8] Joseph Clark, "Can the Liberals Rally?" *Atlantic Monthly*, July, 1953, p. 27.

A concluding article to appear next month will deal with the future of American Federalism.

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The Buckley Campaign

IN 1886 HENRY GEORGE, the Single Taxer, ran for Mayor of New York. He lost. But to this day that particular election year in New York City history is known as the year of the "Henry George campaign." Only the most historically learned of men will recall at this date that the winner in 1886 was a man named Abram Hewitt.

The reason why George is remembered and Hewitt forgotten is that Henry George, right or wrong, stood for something. Prophecies are chancy, but I would be willing to bet a good sum, with a view to collecting or paying off in Heaven, that the 1965 New York mayoral campaign will be more or less bracketed with that of 1886. The third-place loser, William F. Buckley, Jr., will be remembered because he stood for something. John Lindsay, the winner, will be a name for the more esoteric historians. And these historians will have to look him up in Bill Buckley's own story of the 1965 campaign, *The Unmaking of a Mayor* (Viking, $6.95).

Bill Buckley, of course, has never written a *Progress and Poverty*. But he, as much as anybody else, has recreated conservative journalism in the United States as a force. When modern "liberalism" has finally revealed its impotence to solve the pressing problems of the modern world, Mr. Buckley will stand out as a leader among those who really knew what was the matter. So 1965 will be recalled in New York as the year of the "Buckley campaign." Lindsay, like Abram Hewitt, will tend to fade into the shadows.

Buckley's book about his campaign is interesting because the author talked sense to the voters and now writes about his experience with the same witty aplomb that characterized his political fencing. But the really astounding thing about Bill Buckley is not so much that he talked sense but that he actually made it fashionable to bring intelligence to bear on the problems he threw in John Lindsay's face.

This matter of making a cause fashionable is of crucial importance. For what is it that makes modern "liberalism" hang on? "Liberalism" can't feed people, for it knows nothing about the individual wellsprings of plenty. It can't stop wars, for it hasn't the least

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idea about what it takes to keep power in the world limited and balanced. It can't solve the "race" question, for it fails to see that people rise or fall as separate entities – given, of course, the equal protection of laws. So what is it that makes the dead corpus of "liberal" ideas persist? Fashion is what does it, and only a counter-fashion will oust the "liberals."

What Bill Buckley did in his campaign was to sneak into the affections of men in subordinate but important mass communication positions. He didn't win the top editors of the big journals or the bosses of the networks. But, by being one jump ahead of anybody else in his all-around verbal flair and in his control of his various subject matters, Bill literally forced the political scribes to abandon their stereotypes of what a conservative candidate must say and do.

He Clearly Stood for Something

The tip-off on the campaign to come was Bill's experience at the famous Holy Name Society Communion Breakfast, where he made a speech to some 6,000 New York policemen. A reporter, sure in his mind that Buckley must have said what any stereotyped right-winger would have said, missed the true inwardness of the Buckley talk, and what the reporter turned in to his city desk got "escalated" into a defense of the Selma, Alabama, police after it had been passed through a few headlines and been copied by other newspapers. Luckily a tape of the talk existed, and Bill Buckley exploited the tape. The corrections never did catch up with the distortions, but the reporters began to get the idea: Bill Buckley could be a danger to anyone who might trifle with his utterances. Only once before in the history of modern controversy had the "liberals" encountered someone who could fight back from the record. This was when Whittaker Chambers flummoxed his fashionable opposition by actually producing the so-called Pumpkin Papers.

So Bill Buckley went into the mayoral campaign with a growing reputation for effectiveness. He was someone to be feared. When it turned out that he could also be fun, he began to steal the show from John Lindsay (who talked platitudes) and Abe Beame (who spouted statistics). The campaign ended with the tail wagging the dog, which, for headline purposes, was almost as good as a man biting a dog.

Once he had achieved a fashionable break-through, Bill showed to an increasing audience that good prose could be used to set forth good ideas. The Conservative position papers, reprinted as part of

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the text of *The Unmaking of a Mayor*, will be mined for many months to come by people who are serious about schools and housing and smog and the water supply and welfare and narcotics control and crime prevention and all the other subjects that bedevil our big urban conglomerations.

A Growing Political Force

The conservatives and the libertarians are still fashionably written off when it comes to talking about the future of U. S. politics. Buckley, so it is pointed out, missed his primary objective, which was to keep Lindsay from winning. In the New York State elections of 1966 the Conservative Party, running an upstate college dean, Paul Adams, for governor, failed to defeat Governor Nelson Rockefeller. And, in elections throughout the nation, "liberal" Republicans won in Pennsylvania, in Michigan, and in Illinois.

But the movement of ideas goes on. In both the Buckley 1965 campaign for mayor of New York City and in the 1966 campaign for governor of New York the Conservative Party finished ahead of the Liberal Party, which means that the Conservative swing vote is becoming more important than the "liberal" swing vote. And, in the nation as a whole, so-called liberals such as Governor George Romney of Michigan and Senator Chuck Percy of Illinois are turning to supporters of "independent sector" thinking such as Richard Cornuelle for practical solutions to welfare and home ownership problems. From the standpoint of economic theory, there is only a hairline difference between a Romney in Michigan (an inordinate admirer of the first Henry Ford) and a Ronald Reagan in California. Both are advocating an approach to economics that would tend to get the State off people's backs.

A Changing Trend

The measure of Bill Buckley's success both as an editor and as a political candidate is that very recent events have made the last pages of his book sound entirely too pessimistic. "I greatly regret the prospective decline of the GOP," writes Mr. Buckley, "because the alternative is likely to be a congeries of third parties, adamantly doctrinaire, inadequately led, insufficiently thoughtful, improvidently angry, self-defeating sectarian." But need it turn out that way? Isn't it more likely that the next two years will demonstrate the complete sterility of the Great Society? Money from Washington won't solve John Lindsay's problems in New York City. Rent control won't build

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more apartments in that city. Busing children across school district lines won't improve education. Better ideas than these can be found in Buckley's position papers, and, out of desperation, the "liberal" opposition will begin to purloin them.

It has already begun to happen. No one has been more critical of the Conservative attitude toward big city problems than columnist Joseph Alsop, for example. Yet Alsop is now writing that it is the quality of education dispensed in the schools that counts, not the racial ratios. Well, what have the Conservatives been saying all along? Mr. Buckley's book could tell Joe Alsop a thing or two. ◈

▸ FABIAN FREEWAY by Rose L. Martin, (Belmont, Massachusetts: Western Islands Publishing Co., 566 pp., $9.65) and THE DEMOCRAT'S DILEMMA by Phillip M. Crane, (Chicago: Henry Regnery Co., 383 pp., $.75).

Reviewed by George Charles Roche III

TO THOSE AMERICANS perceptive enough to recognize the dangers of our present collectivist course, one of the questions of considerable interest is: "Who did it, and how was it accomplished?" Surely the traditional values of this nation and the attitudes of the American people were not in themselves socialistically oriented. Thus, some analysis of the personnel and the methods producing the present sad state of affairs would be a definite addition to the improved understanding of our situation, as at least one preliminary step toward reversing the trend.

Mrs. Martin and Professor Crane are the authors of two such analyses, both well-researched, complete, and offering a detailed answer to the "Who?" and the "How?" of America's turn down the mistaken road paralleling European collectivism. To the reader searching for the names, dates, organizations, and activities of the prime movers in the process, these two studies offer a wealth of information, reaching from the origins in the late nineteenth century to the events of the 1960's. ◈

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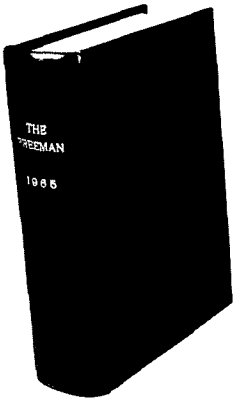

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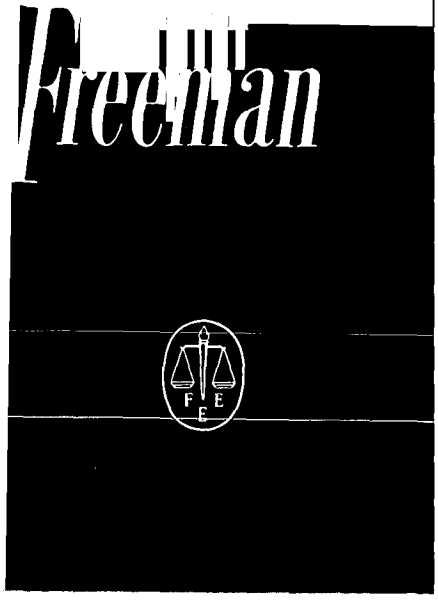

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